MONTANA LEGISLATIVE HISTORY

Chapter 555 19 93

Bill H 289 S _____ Original bill & history ✓ C

H. Committee on Labor & Employment Relations		S. Committee on Labor & Employment Relations	
Hearing Date(s) Feb 09	✓ C	Hearing Date(s) Mar 04	✓ C
Feb 11	✓ C	Mar 18	✓ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
Date Out Feb 12	✓ C	Mar 19	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

3/05 TABLED IN COMMITTEE

HB 285 INTRODUCED BY TUSS, ET AL.

PROHIBIT INSTITUTIONS FROM SELLING AGRICULTURE PRODUCTS AT BELOW MARKET PRICE IN STATE

1/19 INTRODUCED
1/20 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/20 FIRST READING
1/20 FISCAL NOTE REQUESTED
1/27 FISCAL NOTE RECEIVED
1/30 FISCAL NOTE PRINTED
2/02 HEARING
2/09 TABLED IN COMMITTEE

HB 286 INTRODUCED BY L. NELSON, ET AL.

EXEMPT WORKERS' COMPENSATION COVERAGE FOR DEVELOPMENTALLY DISABLED AT EMPLOYMENT TRAINING CENTER

1/19 INTRODUCED
1/20 REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/20 FIRST READING
1/26 HEARING
1/28 TABLED IN COMMITTEE

HB 287 INTRODUCED BY WISEMAN, ET AL.

GENERALLY REVISE WORKERS' COMPENSATION ACT AND OCCUPATIONAL DISEASE ACT OF MONTANA

BY REQUEST OF DEPARTMENT OF LABOR AND INDUSTRY

1/19	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/21	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/04	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	86	12
2/17	3RD READING PASSED	85	13
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/04	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED	50	0
3/25	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS NOT CONCURRED	96	0
4/02	CONFERENCE COMMITTEE APPOINTED		
4/15	CONFERENCE COMMITTEE REPORT NO. 1		
4/17	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	91	4
4/20	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	94	4
	SENATE		
4/05	CONFERENCE COMMITTEE APPOINTED		
4/15	CONFERENCE COMMITTEE REPORT NO. 1		
4/16	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0

4/17	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	39	0
4/22	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR CHAPTER NUMBER 555 EFFECTIVE DATE: 07/01/93		

HB 288 INTRODUCED BY FELAND

GENERALLY REVISE REQUIREMENTS FOR OIL AND GAS OPERATIONS

BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

1/19	INTRODUCED		
1/20	REFERRED TO NATURAL RESOURCES		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/29	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	85	9
2/13	3RD READING PASSED	87	7
	TRANSMITTED TO SENATE		
2/16	FIRST READING		
2/16	REFERRED TO NATURAL RESOURCES		
3/10	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	49	0
3/19	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	95	2
4/02	3RD READING AMENDMENTS CONCURRED	87	12
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR CHAPTER NUMBER 376 EFFECTIVE DATE: 04/16/93		

HB 289 INTRODUCED BY HIBBARD, ET AL.

REQUIRE PUBLIC AGENCY HEADS TO ACTIVELY MANAGE VACATION LEAVE FOR AGENCY EMPLOYEES

1/19	INTRODUCED		
1/20	REFERRED TO STATE ADMINISTRATION		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/26	FISCAL NOTE PRINTED		
2/01	HEARING		
2/03	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	REVISED FISCAL NOTE REQUESTED		
2/05	2ND READING PASSED	96	2
2/08	3RD READING PASSED	93	3
2/09	REVISED FISCAL NOTE RECEIVED		
	TRANSMITTED TO SENATE		
2/09	FIRST READING		
2/10	REVISED FISCAL NOTE PRINTED		

HOUSE BILL NO. 287

INTRODUCED BY WISEMAN, HIBBARD, BENEDICT,
COCCHIARELLA, SQUIRES
BY REQUEST OF THE DEPARTMENT OF
LABOR AND INDUSTRY

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 13, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 15, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 16, 1993	ENGROSSING REPORT.
FEBRUARY 17, 1993	THIRD READING, PASSED. AYES, 85; NOES, 13.
FEBRUARY 18, 1993	TRANSMITTED TO SENATE.
	IN THE SENATE
FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 22, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 24, 1993	SECOND READING, CONCURRED IN.
MARCH 25, 1993	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.
	IN THE HOUSE
APRIL 1, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 2, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1993 — ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 17, 1993 — SECOND READING, CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 17, 1993 — CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 20, 1993 — THIRD READING, CONFERENCE COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 287

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS; EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE PROPRIETORS OR SPOUSES OF PARTNERS; HOLDING CORPORATE OFFICERS PERSONALLY LIABLE FOR THE UNINSURED EMPLOYER PENALTY IF A CORPORATE REPORT IS NOT FILED; REMOVING COSTS, ATTORNEY FEES, AND INCREASED AWARDS FROM APPLICATION TO THE UNINSURED EMPLOYERS' FUND; PROVIDING FOR A LIEN FOR AN UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS; PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO MEDIATION; PROVIDING FOR THE ADMINISTRATION AND CERTIFICATION OF ADJUSTERS; AMENDING SECTIONS 17-7-502, 39-71-116, 39-71-201, 39-71-304, 39-71-401, 39-71-503, 39-71-504, 39-71-505, 39-71-506, 39-71-708, 39-71-902, 39-71-907, 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205, 39-71-2206, 39-71-2615, 39-72-405, AND 39-72-608, MCA; AND REPEALING SECTIONS 39-71-2109 AND 39-71-2207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

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(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of

injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if no beneficiary, as defined in subsections (3)(a) through (3)(d), exists; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e), exists.

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(7) "Days" means calendar days, unless otherwise

specified.

(8) "Department" means the department of labor and industry.

(9) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(10) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3~~,--or-the--uninsured--employers'--fund provided-for-in-part-5-of-this-chapter~~.

(11) "Invalid" means one who is physically or mentally incapacitated.

(12) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(13) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(14) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business

if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(15) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs the worker's ability to work.

(16) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker has no reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(17) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(18) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ the place of business for the purpose of carrying on ~~his~~ the employer's usual trade, business, or occupation.

(19) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(20) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(21) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(22) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

(23) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured

worker reaches maximum healing.

(24) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(25) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-201, MCA, is amended to read:

"39-71-201. **Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $200. If at any time during the prior fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with

expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor."

Section 3. Section 39-71-304, MCA, is amended to read:

"**39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal -- subpoenas.** (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 4. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these

employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event,

unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to ~~his~~ the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l)~~;~~;

(m) a person who is employed by an enrolled tribal member and who operates solely within the exterior boundaries of an Indian reservation.

(3) (a) A sole proprietor or a working member of a partnership who ~~holds--himself--out~~ represents to be or ~~considers--himself~~ is considered an independent contractor

shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3~~,~~ but ~~he~~ may apply to the department for ~~an~~ a personal exemption from the Workers' Compensation Act ~~for himself~~.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains ~~his~~ the status as an independent contractor until ~~he~~ the independent contractor notifies the department of any change in ~~his~~ status and provides a description of ~~his~~ present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if ~~he~~ the officer elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice

required by subsection (4)(a) under oath or affirmation~~,~~ and ~~he~~ is subject to the penalties for false swearing under 45-7-202 if ~~he~~ the officer falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on ~~his~~ the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 5. Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund** -- appropriation. (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves ~~shall~~ may not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the ~~moneys~~ money of the fund. The cost of administration of the fund ~~shall~~ must be paid out of the money in the fund.

(3) The amounts necessary for the administration and payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 6. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund -- option for agreement between department and injured employee** -- liability of corporate officers. The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the penalty, wages paid to spouses of sole proprietors or spouses of

partners must be excluded. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) (a) The fund ~~shall~~ must receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer

pursuant to subsection (2)(a).

(5) When a corporation subject to Title 35 has failed to file an annual report with the secretary of state as required by law, the department shall hold the corporation officers jointly and severally liable for any uninsured employer penalties or claim costs due for the period in which the corporation is delinquent in filing the annual report. If the annual report is filed after the specified time, the officers may not be held liable for the uninsured employer penalties or claim costs that accrue after the report is filed."

Section 7. Section 39-71-505, MCA, is amended to read:

"**39-71-505. Applicability of other provisions of chapter to fund -- limitations.** All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3~~,~~, except that the workers' compensation judge may not do the following:

(1) assess costs and attorney fees, as provided in 39-71-611, against the uninsured employers' fund; or

(2) assess an increase in award for unreasonable delay or refusal to pay, as provided in 39-71-2907, against the uninsured employers' fund."

Section 8. Section 39-71-506, MCA, is amended to read:

"**39-71-506. ~~Collection---of---payments--from--uninsured~~**

~~employer-by-suit~~ Lien for payment of unpaid penalties and claims -- levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the **~~sums-may-be-collected-by-the department-through-suit~~** unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in the real or personal property subject to the lien if:

(a) the third party interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that any penalties and claims relating to the property have been paid.

(3) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 9. Section 39-71-708, MCA, is amended to read:

"39-71-708. Compensation for disfigurement. (1) ~~The department may award proper and equitable benefits for~~ Injured workers who suffer serious face, head, or neck disfigurement~~,~~ may be entitled to benefits not to exceed $2,500, in addition to benefits payable under 39-71-703.

(2) ~~No~~ A payment under this section ~~shall~~ may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 10. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount

of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 11. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation. (1) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of ~~his~~ employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of ~~his~~ death resulting from such injury, the compensation must be paid to ~~his~~ the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the administration and

payment of benefits from this fund are statutorily appropriated, as provided in section 17-7-502, from this fund."

Section 12. Section 39-71-2104, MCA, is amended to read:

"39-71-2104. Renewal of application. ~~Every~~ An employer, so long as ~~he~~ that employer continues in ~~his~~ employment and ~~so long as he~~ continues to be bound by compensation plan No. 1, ~~shall, at least 30 days before the expiration of each fiscal year,~~ annually renew ~~his~~ the application to be permitted to continue to make ~~such~~ payments ~~as aforesaid~~ directly to ~~his~~ employees for the next ~~ensuing fiscal~~ year, ~~and under like circumstances as those mentioned for the granting of such permission upon such first application.~~ the The department may, with the concurrence of the Montana self-insurers guaranty fund, renew the ~~same~~ application from year to year. The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department."

Section 13. Section 39-71-2106, MCA, is amended to read:

"39-71-2106. Requiring security of employer. (1) (a) The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department.

All securities of the United States treasury must be used as a security deposit in book-entry form. Except as provided in subsection (1)(b), the security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(b) The department may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of solvency and financial ability to pay the liabilities provided by this chapter.

(2) (a) The department shall require an employer to give security in addition to the security described in subsection (1) if:

(i) the department determines that the employer is insolvent or lacks the financial ability to pay the compensation that is required under this chapter and that is chargeable to the employer during the fiscal year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is ~~an association, corporation, or organization~~ a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) (a) The security provided for in subsection (2) must be deposited with the department and may be either an estimated percent of the employer's last preceding annual payroll or a percent of the established amount of ~~his~~ the employer's annual payroll for the fiscal year. The security may consist of:

(i) a bond or undertaking executed to the department in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will pay or cause to be paid to ~~his~~ employees all sums and amounts for which the employer becomes liable under the terms of this chapter during the fiscal year; or

(ii) any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations that the department considers solvent.

(b) Every deposit and the character and amount of the securities must at all times be subject to approval, revision, or change by the department as it may require.

(c) Upon proof of the final payment of the liability

for which the securities are given, the securities or any remainder of the securities must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the deposits or securities and the earnings of the deposits or securities."

Section 14. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the department.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the national council on compensation insurance as the insurer's notice of coverage.

~~(2)~~(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer ~~which~~ that as a general business practice does not comply with the 30-day notice requirement ~~as~~ set forth in subsection (1) ~~of this section~~."

Section 15. Section 39-71-2205, MCA, is amended to read:

"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from the national council on compensation insurance as the insurer's

notice of cancellation.

~~(2)~~(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 16. Section 39-71-2206, MCA, is amended to read:

"39-71-2206. Deposits by insurer with department to guarantee payment of liability. (1) (a) Before issuance of any policy by an insurer as herein authorized, the insurer ~~must~~ shall deposit with the department ~~bonds~~ book-entry securities of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the department in an amount not less than $25,000 or more than $200,000, as the department may determine.

(b) If any insurer fails to discharge any liability after the amount thereof is determined by the department and within the time limited by the department, the department shall convert the bonds or ~~such~~ any part thereof as is necessary into cash and from the proceeds liquidate ~~such~~ the liability, and thereafter the insurer ~~must~~ shall make an additional deposit to meet any deficiency caused thereby. It

is intended to give the department the discretion in the matter of whether an insurer has failed to discharge any liability.

(c) If any insurer fails to replace a canceling, terminating, or maturing security within the time limit established by the department, the department shall protect the security deposit by converting the canceling, terminating, or maturing security into cash and shall maintain the deposit until a replacement security acceptable to the department is deposited.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the department for the protection and guarantee of the payment of ~~such~~ the liability in ~~such~~ a sum as the department may direct. However, if the department considers the amount on deposit by the insurer under the provisions of subsection (1) ~~of this section~~ sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the department as security for the payment of the liability for which the deposit was made. ~~Such~~ The deposit may be reduced from time to time with the permission of the department as

the payment of the liability of the insurer may reduce the amount required to be on deposit. ~~Such~~ The deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which ~~such~~ the deposit was made, any deposit remaining must be returned to the depositor. All earnings made by ~~such~~ the deposit must first be applied upon any liability of the depositors, and if no such liability exists, then ~~such~~ the earnings must upon demand be delivered to ~~such~~ the depositor. The department and its bondsmen are liable for the value and safekeeping of ~~such~~ the deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

(4) In the event of an insolvency of a plan No. 2 insurer, the department may, at its discretion, release part or all of the deposit held to the Montana insurance guaranty association for payment of the insurer's Montana workers' compensation claims if:

(a) the insurer has been determined to be insolvent by a court of competent jurisdiction or bankruptcy proceedings have been instituted by or against it;

(b) the insurer is unable to pay its workers' compensation claims; and

(c) the insurer's Montana workers' compensation

liabilities have become the responsibility of the Montana insurance guaranty association."

Section 17. Section 39-71-2615, MCA, is amended to read:

"39-71-2615. Initial fee -- assessment. (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the ~~12-month-period~~ compensation paid during the policy year immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the department the

collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment."

Section 18. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation. (1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When ~~any~~ an employee in employment on or after January 1, 1959, because ~~he~~ the employee has an occupational disease incurred in and caused by ~~such~~ the employment ~~which~~ that is not yet disabling, is discharged or transferred from the employment in which ~~he~~ the employee is engaged or when ~~he~~ the employee ceases ~~his~~ employment and it is in fact, as determined by the medical panel, inadvisable for ~~him~~ the employee on account of a nondisabling occupational disease to continue in employment and ~~he~~ the employee suffers wage loss by reason of the discharge, transfer, or cessation, ~~the department may allow compensation on account thereof as it considers just,~~ compensation may be paid, not exceeding $10,000, by an agreement between the insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in part 24 of this chapter must be followed."

Section 19. Section 39-72-608, MCA, is amended to read:

"**39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy. When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination."

Section 20. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be

listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of

Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. **Section 21.** **Time limit to appeal.** A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

NEW SECTION. **Section 22.** **Administration of adjusters.** (1) An insurer shall conduct administration of its claims adjusting services through a person knowledgeable in the application of Montana workers' compensation and occupational disease law and administrative rules. The person retained or employed as an adjuster by an insurer must be able to demonstrate, in a manner satisfactory to the department, a thorough knowledge of workers' compensation and occupational disease law and administrative rules.

(2) an insurer shall designate at least one adjuster

who has the authority and ability to pay compensation when due and who has the authority to settle claims.

(3) The department, in cooperation with the state auditor, may regulate and certify adjusters for workers' compensation adjusting.

NEW SECTION. **Section 23.** **Repealer.** Sections 39-71-2109 and 39-71-2207, MCA, are repealed.

NEW SECTION. **Section 24.** **Codification instruction.** [Sections 21 and 22] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 21 and 22].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0287, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: A bill generally revising the Workers' Compensation Act and the Occupational Disease Act of Montana.

ASSUMPTIONS:

In reference to sections 14 and 15 of the proposed legislation:

1. 25% of the phone and postage costs for the Policy Compliance unit of the Employment Relations Division (ERD) of the Department of Labor, or $1,100 per year, would be eliminated under the change created by this proposed legislation.
2. Programming changes the ERD database are needed to enable ERD to accept electronic access to policy information from Plan II insurance companies. Programming costs are estimated at a total of $3,500, or $1,750 to cover Section 14 changes (Section 39-71-2204) and $1,750 to cover Section 15 changes (Section 39-71-2205). The NCCI data tapes would arrive monthly, and loading the data from these 12 tapes per year is estimated to cost a total of $2,400. After the first-year conversation costs of $3,500, the on-going costs will increase by $1,300. ($2,400 NCCI data download less $1,100 old postage/phone costs).

In reference to section 22 of the proposed legislation:

3. 1.00 FTE management analyst (grade 13) would be required to assist ERD in developing administrative rules, coordinating with the Insurance Commissioner to develop standards for certification, testing methodologies for certifying, tracking ongoing training required for continuing certification, managing complaints, assessing fines, and de-certification procedures when necessary.
4. Costs associated with the support of the management analyst will be similar to costs associated with staff in the Investigations Unit of ERD.
5. One-time start-up costs for the management analyst would include desk, chair, file cabinet, and PC with compatible software.

FISCAL IMPACT: (continued)

Dave Lewis 2-1-93

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-2-93

WILLIAM WISEMAN, PRIMARY SPONSOR DATE

FISCAL IMPACT:

Expenditures:
Employment Relations Div. (Pg 04)

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	60.55	61.55	1.00	60.55	61.55	1.00
Personal Services	1,813,414	1,843,205	29,791	1,817,143	1,846,950	29,807
Operating Expenses	943,410	956,610	13,200	926,413	936,713	10,300
Equipment	87,020	93,070	6,050	87,020	87,020	0
Benefits	1,628,827	1,628,827	0	1,769,827	1,769,827	0
Total	4,472,671	4,521,712	49,041	4,600,403	4,640,510	40,107
Funding:						
General Fund	348,118	348,118	0	319,589	319,589	0
State Special Revenue	1,723,306	1,772,347	49,041	1,722,779	1,762,886	40,107
Federal Revenue	635,365	635,365	0	632,662	632,662	0
Proprietary Revenue	1,765,882	1,765,882	0	1,925,373	1,925,373	0
Total	4,472,671	4,521,712	49,041	4,600,403	4,640,510	40,107
Revenues:						
WC Assessments (02)	3,197,368	3,246,409	49,041	3,199,373	3,239,480	40,107

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Sections 14 and 15 of the proposed legislation would reduce the cost of policy data submission for Plan II insurers, providing minor savings to self-insured local government entities.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
1. Benefit payments from the subsequent injury fund and the uninsured employer fund would be statutorily appropriated [sections 5 and 10] due to unpredictability of the amount of benefits payments required.
2. Automation conversion [sections 14 and 15] would improve reliability of policy information and reduce claims handling errors.
3. Certification and regulation [section 22] would reduce error rates for insurers.

covered unless the employer elected to cover him.

REP. WHALEN asked Ms. Van Riper the way the bill is currently drafted, if the volunteers are available to work. If not, he asked if she could suggest wording that would include this.

Ms. Van Riper referred to the language in the amendment, and stated that there is nothing in the law allowing the employer to elect covering these volunteers for Workers' Compensation. Furthermore, she suggested changing the language.

REP. ELLIS asked Ms. Van Riper if this bill only applies to recreational facilities. He asked if an employee working on a fence line is hurt on that fence line while hunting, will they be covered?

Ms Van Riper stated that initially this bill was directed at ski areas; however, they decided to expand it. She stated that if the employee was not doing official business, the injured employee would not be covered.

REP. TASH asked **REP. SCHWINDEN** if the intent of this bill was originally directed at ski area.

REP. SCHWINDEN stated that yes; however, it became apparent that this is a much larger issue that needs to be covered. Not just ski areas, but anyone on their own time recreating needs to be addressed in this bill.

REP. TASH asked **REP. SCHWINDEN** if in regard to volunteer ski patrols, this bill will see to it that they will not be covered by workers compensation.

REP. SCHWINDEN stated that this is not the intent of the bill.

REP. GALVIN asked **REP. SCHWINDEN** what the effective date of this bill will be if it is passed.

REP. SCHWINDEN stated that the effective date will be October 1, 1993.

Closing by Sponsor:

REP. SCHWINDEN closed on HB 259 by stating that he is pleased with the number of proponents that testified today. He stated that he has been a long-time supporter of employee rights; however, this should be a personal responsibility.

HEARING ON HB 287

Opening Statement by Sponsor:

REP. WISEMAN, HD 33, Malmstrom AFB, sponsor, stated that this bill's purpose is a small provision to Workers' Compensation. He

stated that the brief overview of the bill deals with an employee who is injured at a business that should have insurance but does not.

Proponents' Testimony:

Chuck Hunter, Department of Labor, handed the committee members a synopsis. **(EXHIBIT #4)** He stated that this is a small bill designed to take care of three major areas. He stated that the Department in the past has had to borrow from insurance codes. He suggested that the approval date for Plan 1 insurers be staggered. This would also stagger the workload so the workers can do a good analysis.

This bill would allow the injured worker and employer to set the amount.

Allen Chronister, Montana School Groups, stated that a large number of the school districts have become Plan 1 insurers. He referred to page 9 of the bill and offered some amendments. He stated that the biggest contributions are primarily from teachers.

He proposed to change the language of page 9, section 201. Furthermore, he wants the minimum assessment to be $15,000. He asked that a cap of $250 million be provided for the amount of payroll an employee can be accessed.

He stated that about $160,000 is contributed yearly. In FY92, 25 percent of the contribution consists of Plan 1 and in FY93, it raised to 30 percent. He stated that there needs to be a reallocation among Plan 1 insurers stating who pays what amount.

George Bennett, Montana Bankers Association, referred to page 9, section 8. He stated that this section is his biggest concern. He stated that the intent of this section is to give the Department of Labor what the Department of Revenue has for taxes. The intent is to protect all lien holders; however, the language may be confused. **(EXHIBIT #5)**

Roger Tippy, Independent Bankers, stated that due process can't be looked up. He also stated that it may be hard to delegate to specific agencies. **(EXHIBIT #6)**

Russell Hill, Montana Trial Lawyers Association, stated that he is here in support of HB 287. He referred to page 13, subsection m.

He referred to Section 9 and stated that the limit has been $25,000 since 1965 and section 18 has had a limit of $10,000 since 1977.

Third, he referred to page 32, line 24. He stated that this chapter should be replaced with chapter 7.

George Wood, Montana Self Insurers Association, stated that he supports the bill, but not the amendments by the school group. He stated that 54 insurers pay more and one pays less with the amendments.

Jan Van Riper, Attorney in Helena, referred to page 35 and 36. She stated that currently a rule in Montana requires all insurance companies doing business to have an in-state adjuster. However, this rule is very difficult to enforce.

She proposed that the State Fund separately track the payments they receive. She gave an example of a medical evaluation that the doctor had erroneously performed. She also proposed to pass additional remedies. She handed in written testimony. **(EXHIBIT #7 & 8)**

Ken Williams, Montana Power Company, referred to the testimony by George Wood. He stated that he supports the bill as well, but also resists the amendment by the school group.

Dan Walker, Self Insurers Association, also supports the bill, but not the amendments. He stated that to change the rules at this stage doesn't make sense.

Gary Spaeth, Liability Coalition, referred to page 19, paragraph 5. He stated that his concerns with this section are that this allows a piercing of the corporation male. This could create problems in other areas also. He stated that he doesn't feel this section is a mandatory part of the bill.

Jacqueline Lenmark, American Insurance Association, stated that she supports HB 287, but would like a withdrawal of section 2. She suggested putting this section somewhere where it will get special attention. She stated that she supports the bill, but not the proposed amendments by Van Riper.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ELLIS told Ms. Van Riper that she clearly presented some dramatic changes. Furthermore, he asked why it had not been presented to anyone else before today.

Ms. Van Riper stated that nobody had advance notice except the select committee on Workers' Compensation.

REPRESENTATIVE DRISCOLL asked Mr. Hunter to speak again on the special fund.

Mr. Hunter stated that this funding is associated with Plan numbers 1, 2 and 3 insurers. The fiscal note is $5,000.

REP. DRISCOLL asked if the reason the fiscal note is $5,000 is

because they use computers to save the Plan 2 which costs the state money.

Mr. Hunter stated that the National Rating Association has a list of who is covered and who is not. This list is required by all 55 insurers. This may possibly have an overall savings on Plan 2 insurers; however, it will produce an overall net savings.

REP. WHALEN asked Mr. Hunter to refer to section 7 of the bill. He asked Mr. Hunter if the State Fund is the one that administers treatment of the union employee fund.

Mr. Hunter stated that the Department of Labor is the safety net and they administer it within the Department.

REP. WHALEN asked Mr. Hunter if he has any other rationale for them being treated differently other than the synopsis he presented.

Mr. Hunter stated that the funding is through penalties themselves. When it is depleted, it is gone.

REP. WHALEN asked Mr. Hunter if it would be correct to say that there is a reasonable refusal or delay.

Mr. Hunter stated that yes, that is correct.

REP. WHALEN asked Mr. Hunter what his reaction is to changing the system.

Mr. Hunter stated that the department doesn't have a bone to pick with either of the systems because both of them work well.

REP. SIMON asked Allen Chronister to refer to the amendments. He asked about the definition of compensation and stated that the meaning could be misconstrued.

Allen Chronister stated that any language can be misconstrued by anyone. He stated that he took this language from two other reports. These two other reports have been working well so far. He stated that he has no objection if Rep. Simon has a better change. He referred to 39-71-1004 MCA.

REP. SIMON asked Mr. Hunter what his definition of compensation is.

Mr. Hunter stated that he is not sure, but he agrees with Allen Chronister and what he said.

REP. MILLS told Ms. Van Riper that he enjoyed her scenario because he can relate to it. He asked if she thought this bill could cure the problems for everyone in Montana.

Ms. Van Riper stated that she is not sure if it could cure

everyone's problems; however, with the appropriate language, it could help.

Closing by Sponsor:

The sponsor closed on HB 287.

HEARING ON SB 116

Opening Statement by Sponsor:

SEN. HARP opened on SB 116 by referring to what the bill will do. He referred to page 3, lines 6-10.

SEN. HARP asked permission to be excused by Chairman Nelson. Chairman Nelson granted his request.

Proponents' Testimony:

Tim Dowling, Montana Food Distributors Association, stated that SB 116 is not an earth-shaking bill. He stated that previously outside employees agree with the Montana Minimum Wage Law. He stated that this bill is not intended for route sales such as beer and pop, it just applies to outside sales. **(EXHIBIT #9)**

Roger Tippy turned in written testimony. **(EXHIBIT #10)**

Mike Stump, Montana Food Distribution Association, stated that he would like to be on the record in support of SB 116.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. DRISCOLL asked if this bill would exempt these employees from minimum wage and overtime.

Roger Tippy stated that yes, it would exempt them from both.

REP. DRISCOLL asked Roger Tippy if they have both outside salesman and delivery trucks and they don't want to pay these employees even minimum wage.

Mr. Tippy stated that the drivers can deliver more efficiently if they don't have to stop and take orders.

REP. PAVLOVICH asked Mr. Tippy why the effective date is what it is.

Mr. Tippy stated that he can't tell him why.

Closing by Sponsor:

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL DATE 2/4/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		✓
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS	✓		
REP. TIM WHALEN	✓		

EXHIBIT #4
DATE 2/4/93
SB HB 287

House Bill 287
Synopsis of Section Content

Section 1: Definitions

Section 2: Separates funds for Subsequent Injury and Uninsured Employers Fund from Workers'Compensation administrative fund, and provides for assessment to all plan 1s and 2s.

Section 3: Allows Uninsured Employers fund to issue subpoenas.

Section 4: Exempts person working for indian employer on indian lands from coverage.

Section 5: Provides for statutory appropriation for Uninsured Employers Fund.

Section 6: Provides that wages paid to spouses of uninsured sole proprietors or partners will not be used in calculation of penalty, and provides that corporate officers can be held liable for amounts owing to the fund if they have not made proper filings to the secretary of state.

Section 7: Limits the uninsured employers fund's liability for attorney fees and awards, since they are not an insurer.

Section 8: Provides for the filing of liens for debts owed to the uninsured employers fund.

Section 9: Clarifies how disfigurement awards are made.

Section 10: Provides that the administrative costs of the subsequent injury fund must be paid out of that fund.

Section 11: Provides for statutory appropriation of subsequent injury funds.

Section 12: Provides that the department may set staggered renewal dates for Plan 1 applications.

Section 13: Requires security deposits placed with the department to be in book entry form.

Section 14: Allows the department to use the National Council of Compensation Insurers to be the department's agent for notice of coverage.

Section 15: Same as above, except for notice of cancellation of coverage.

Section 16: Provides that the department may cash a maturing security and retain the funds until the security is replaced by the insurer. Also provides that the department can transfer the security to the Montana Insurance Guarantee Association in the event of an insolvency.

Section 17: Provides that a self-insurer's assessment is based upon compensation paid during the preceding policy year rather than the preceding 12 months.

Section 18: Clarifies how a lump sum payment for a non-disabling occupational disease may be made, and specifies that mediation procedures shall be used in the event of a dispute.

Section 19: Clarifies that the party requesting an autopsy shall be the party that pays for the autopsy under the occupational disease act.

Section 20: Places the subsequent injury fund and the uninsured employers fund in the list of statutory appropriations.

Section 21: Provides a time limit for benefit appeals regarding the uninsured employers fund.

Section 22: Provides for involvement, along with the state auditor's office, in a new process to set quality standards for workers' compensation claims adjusters.

Section 23: Repealer.

Section 24: Codification instructions.

EXHIBIT #5
DATE 2/4/93
SB HB 287

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME GEORGE BENNETT BILL NO. H.B. 287

ADDRESS POBox 1705 HELENA 59624 DATE 2/4/93

WHOM DO YOU REPRESENT? MONTANA BANKERS ASSOCIATION

SUPPORT _____ OPPOSE _____ AMEND X

COMMENTS: Section 8, Pages 15 and following allows the Department to obtain a judgment. Dept. of Revenue and Department of Social and Re. Servs. (SRS) have a procedure for filing a "Warrant of Distraint" to obtain a judgment and lien.

Bill should be amended to adopt same procedure as used by Revenue and SRS.

HR:1991
CS15

Exhibit 5
2-4-93
HB-287

Compiler's Comments

1991 Amendment: In (1), near beginning after "department of revenue", inserted "or of the department of transportation"; and made minor changes in style. Amendment effective July 1, 1991.

15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703.

History: En. Sec. 2, Ch. 439, L. 1981; amd. Sec. 1, Ch. 131, L. 1989.

15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

History: En. Sec. 3, Ch. 439, L. 1981.

15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

History: En. Sec. 4, Ch. 439, L. 1981.

15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that he disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed.

History: En. Sec. 5, Ch. 439, L. 1981; amd. Sec. 4, Ch. 811, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "right to a review of the tax liability pursuant to 15-1-211" for "right to request a hearing on the matter of tax liability"; in (2), in first sentence, substituted "review" for "hearing", deleted former second sentence that read: "A request for a hearing must be made in writing within 30 days of the date of the notice", and substituted last sentence relating to requirement that review process and appeals be completed before warrant may be executed for former last sentence that read: "If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled"; and deleted (3) that read: "(

...aring is subject to the contested case ...ons of the Montana Administrative Pro... Act. Before a decision may be appealed ...district court, an appeal must first be ...e the state tax appeal board. A request ...earing must be in writing in order to ...ce execution on a warrant".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the warrant and notice from the department that the applicable hearing ...isions have been complied with, the sheriff or agent authorized to collect ...ax shall proceed to execute upon the warrant in the same manner as ...cribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent ...horized to collect the tax. An agent is not entitled to any fee or compensa...in excess of actual expenses incurred in enforcing the warrant.

(3) A sheriff or agent shall return a warrant, along with any funds ...ected, within 90 days of the date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the ...e remedies to collect the deficiency as are available for any civil judgment.

History: En. Sec. 6, Ch. 439, L. 1981.

Cross-References
Execution of judgment, Title 25, ch. 13.

15-1-707. Emergency execution upon warrant. (1) The department ...y execute upon a filed warrant for distraint without providing an opportu... for a hearing prior to execution if the department determines that the ...ection of the tax is jeopardized because of the delay imposed by the hearing ...quirement.

(2) When the provisions of this section are utilized, the department must ...fy the taxpayer and inform the taxpayer that he has a right to request a ...aring to be held subsequent to execution. A hearing, if desired, must be ...quested in writing within 30 days of the date of the notice and, if requested, ...st be held as soon as possible. The commencement of a proceeding under ...1-705 does not preclude the use of the provisions of this section if the ...partment determines that such action is appropriate.

History: En. Sec. 7, Ch. 439, L. 1981.

15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax ...s penalty, if any, and accumulated interest, the department shall release ... lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that ... release or partial release of the lien will facilitate the collection of the unpaid ..., penalty, and interest, the department may release or may partially ...ease the lien acquired by filing the warrant for distraint. The department ...ay release the lien if it determines that the lien is unenforceable.

History: En. Sec. 8, Ch. 439, L. 1981.

15-1-709. Remedy not exclusive. The use of the warrant for distraint provided for in 15-1-701 through 15-1-708 is not exclusive, and the depart...ent may use any other remedy provided by law for the collection of tax debts.

EXHIBIT 5th D
DATE 2/4/93
SB HB 287

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME ROGER TIPPY BILL NO. HB 287

ADDRESS 1215 11th Ave, Helena DATE 2/4/93

WHOM DO YOU REPRESENT? Mont Independent Bankers

SUPPORT _____ OPPOSE _____ AMEND X

COMMENTS: §8 clarify due process

HR:1991
CS15

EXHIBIT ~~EXHIBIT~~ 6
DATE ~~2/4/93~~ 2/4/93
HB 287

Speed Messag

To Sherri Schmaus, Secretary
House Labor Committee
By Facsimile: 444-4105

The Meloy Law Firm
P.O. BOX 1241
80 S. WARREN
HELENA, MONTANA 59624
(406) 442-8670

Subject Testimony before House Labor Committee; 2/4/93; HB287

Date Feb 5 19 93

Enclosed are some written submissions as requested by Rep. Nelson in the Labor Committee hearing yesterday. They are in connection with my testimony on HB 287.

Signed Janice S. VanRiper

Presented to the House Select Committee on Workers' Compensation by Janice S. VanRiper, January 28, 1993.

TWO MAJOR ISSUES FOR THIS LEGISLATIVE SESSION

I. MISPLACED FOCUS ON COMPENSATION AND MEDICAL BENEFITS TO CLAIMANTS AS THE MAJOR FACTORS DRIVING UP COSTS

In 1987 the legislature did a major revision of workers' compensations laws, including a major reduction in most kinds of compensation benefits. In addition to reducing the amount and duration of benefits going to claimants, the definition of "accident" was drastically narrowed, resulting in the exclusion of many injuries from coverage at all. Again in 1991, the legislature reduced the compensation benefits in a major way. As a result of these changes, it is inconceivable that benefits *actually going directly to injured workers* can be driving up costs. And yet, apparently, that is what some of the figures the legislature has been provided show. (Of course, the actual cost of medical benefits have increased from inflationary pressures -- that doesn't mean that claimants are getting more medical services.)

What appears to be happening is that insurers are chalking up to "benefit costs" many administrative costs incurred by the insurers themselves. I am not in a position to obtain a lot of hard evidence about this, and I understand that some attempts to obtain figures have not been successful. I simply suggest that the task force be aware of these potential pressures on costs, try to obtain more information about them, and hesitate to reduce claimant benefits further until these are well understood. There may be more than this, but these are the kinds of things I've tumbled across in my practice:

(A) Payments to doctors for "independent medical evaluations" requested rather routinely by insurers. (I became concerned about this due to the fact that in the last year three of my clients were erroneously billed for

these services. In these three cases the clients told me they were seen by the insurer's doctor for less than 15 minutes. The bills ran: $350.00, $350.00, and $375.00. I understand that the fee schedule for a similar visit to a claimant's doctor is very substantially less (certainly less than $100.00). IME appointments are very common, and occasionally there is more than one request for these on a case.

(B) Medical Panels. Insurance companies are authorized by statute to require claimants to attend medical panel evaluations. There are three in the state (that I know of), so the claimant is required, in most cases to do substantial travel. For a typical back injury case, the panel usually consists of an orthopaedic specialist, a neurologist, a physiatrist, and psychologist or psychiatrist and possibly an internist. They require the claimant to stay in the hospital for a few days, and submit to all tests the doctors might wish to take. I've never seen the entire bill for one of these panels, but one can safely assume that they run several thousands of dollars. These panels are very common, and frequently are used in the same cases in which the insurers already have an IME or two. (Certainly, this is not to say that there are not certain special cases in which a panel evaluation might be appropriate. My contention is that these are grossly over-utilized by insurers, and that they contribute substantially to the medical costs of claims.)

(C) Insurers, at least the State Fund, retain doctors, chiropractors, dentists, nurses, etc., to examine files. Additionally, some of the rehabilitation consultant firms now employ "nurse-consultants" to "medically manage" claims (and these services are purchased by the insurers). It would be interesting to see the costs associated with these, especially in conjunction with those costs previously mentioned.

(D) "Rehabilitation Payments". There is not enough space here to fully discuss the rehabilitation benefit problem. Suffice it to say that there are two kinds of rehabilitation costs:

> (1) Payments made by insurers to private rehab. agencies for services of benefit primarily to insurers; and,
>
> (2) direct rehabilitation benefits paid to claimants in the form of retraining programs and on-the-job training.

It is my suspicion that the former payments outweigh the latter grossly. It seems that this is simply information that should be obtained to see how much of the "rehab" dollar is paid to private rehab firms for what is essentially insurer-related administrative work, versus what actually has gone into real rehabilitation. (This would be especially interesting in light of the 1991 amendments which drastically reduced a claimant's right to partial disability benefits in favor of the right to obtain actual rehabilitation services.)

(E) Fraud investigation. The carriers make what appears to be liberal use of private investigators to investigate claimants, and their tactics include surveillance and videotaping. It would seem to be of interest to find out the price tag associated with this, and the results associated with the price tag. Also, these costs may be being chalked up to "claimant benefits", although I don't know that for sure. Also, rehabilitation agents and in-house field personnel additionally are used for fraud investigation at times. (I mention this primarily because in all the information that I've seen which has been provided by insurers on the subject of "inadequate resources for fraud investigation", these resources have not been mentioned.

Exhibit #7
2-4-93
HB-287

Some proposed legislation requiring insurers to track these costs separately is attached.

II. LACK OF ADEQUATE REMEDIES.

Along with drastically reducing the benefit package to injured workers, the 1987 session all but reduced to naught any meaningful remedies against insurers for delaying or failing to pay benefits adequately and in a timely manner. What I see primarily in my practice now are not claimants who come in needing assistance with settlements, but rather those whose benefits have never been initiated, whose unpaid medical bills (clearly payable by the insurer) have been turned over for collection against them, who are being denied reasonable medical treatment, whose compensation rates have been calculated wrongly, etc. Insurers simply no longer have legal incentives to follow the law. Below is an example of what a claimant might encounter (and I ensure you it is not a rare situation). I've not yet drafted any proposed language to change this, but will shortly.

Example: Claimant comes to see lawyer 8 months after injury. Claimant was injured June 6, 1991, and filed a claim for benefits 6 weeks later. Claimant worked for three weeks after the accident, then could not continue due to the accident. In addition to losing the hourly pay associated with his job, claimant looses annual bonuses, commissions, and health insurance. Claimant reveals that the insurer did not commence payments until 3 months after claim filed, so claimant has had to sell some assets to survive financially. Additionally, two accident-related doctor bills have been turned over for collection because insurer has not paid. Claimant's doctor has recommended additional physical therapy, which insurer won't authorize, so his medical condition is deteriorating. Claimant wonders why his compensation rate is so low, and it is discovered that the insurer did not include in the wage basis the bonuses and commissions he received, although it is required by law. WHAT TO DO?

First, the lawyer calls the insurer and gets no response. The lawyer then makes a written demand to the insurer, and waits the required 15 working days for a response (as required by law). The lawyer then files a request for mediation, and waits for the mediator to send a notice to the insurer, and then waits another 10 days while the insurer responds to the notice (or doesn't respond, which is usually the case). Then a mediation conference is set for sometime in the future. The claimant must personally appear at this mediation conference, but the insurer doesn't have to. Claimant then waits another 10 days for the mediator to issue a RECOMMENDATION. (The mediator has no authority to order anything. Then the claimant must wait another 45 working days while the insurer has an opportunity to decide whether it will go along with the mediator's recommendation. Only then, after this incredible process, may the claimant file a petition in court, and at that time has the first opportunity to present his case before someone who has any authority. A trial will generally be held in about two months, but then there is the wait for the court decision.

Rarely do these issues make it all the way through to the court. Generally, *sometime* prior to that stage the insurer will raise the comp. rate, pay the bills, authorize the medical treatment, etc... So after all the waiting and pleading and worry and delayed treatment, the benefits are finally forthcoming. But the insurer now has to pay no attorney fees and costs for the claimant. So the insurer gets away with delaying all of these benefits (and in most unrepresented cases, probably gets away without paying them at all) at no cost to the insurer!

This is essentially a description of how the current legal "remedies" created by this legislature operate in practice.

(With this scenario in mind, is it any wonder why many injured workers cannot find legal representation?)

Exhibit #7
2-4-93
HB-287

ATTACHMENT A

1/28/93 by Jan VanRiper
Proposed Legislation re: tracking certain State Fund costs

NEW SECTION: The state fund shall account for different kinds of claims and administrative expenses in separate class codes. Payments made to claimants and their designated health care providers must be accounted for separately from payments to providers hired by the state fund.

The state fund shall specifically account for the following costs separately:

(a) payments to health care providers for independent medical evaluations or other services provided at the request of the state fund;

(b) payments to medical panels;

(c) payments to rehabilitation providers for services performed at the request of the state fund;

(d) payments made for retraining or on-the-job training programs;

(e) payments made to in-house or contracted legal counsel; and

(f) payments made in connection with fraud investigation.

Amendments to House Bill No. 287
First Reading Copy

Requested by Rep. Cocchiarella
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
February 1, 1993

1. Title, page 1, lines 19 through 21.
Following: ";" on page 19
Strike: remainder of line 19 through ";" on line 21

2. Title, page 2, lines 13 and 14.
Strike: "AND" on line 13 through "CERTIFICATION" on line 14

3. Title, page 2, line 14.
Following: ";"
Insert: "PROVIDING FOR SPECIFIC CLAIMS EXPENDITURES CODES;"

4. Title, line 16.
Strike: "39-71-505,"

5. Page 19, lines 12 through 23.
Strike: section 7 in its entirety
Renumber: subsequent sections

6. Page 35, line 17 through page 36, line 5.
Strike: "(1)" on page 35, line 17 through the remainder of section 22
Insert: "Each insurer is required to designate at least one adjuster who shall maintain an office in Montana, shall pay compensation when due, and has authority to adjust and settle claims."

7. Page 36, line 6.
Following: line 5
Insert: " NEW SECTION. Section 22. Specific claims expenditures codes. The state fund shall account for different kinds of claims and administrative expenses in separate class codes. Payments made to claimants and their designated health care providers must be accounted for separately from payments to providers hired by the state fund. The state fund shall specifically account for the following costs separately:
(1) payments to health care providers for independent medical evaluations or other services provided at the request of the state fund;
(2) payments to medical panels;
(3) payments to rehabilitation providers for services performed at the request of the state fund;
(4) payments made for retraining or on-the-job training programs;
(5) payments made in-house or for contracted legal counsel; and
(6) payments made in connection with fraud investigation."

Exhibit #7
2-4-93
HB-287

Renumber: subsequent sections

8. Page 36, line 9.
Page 36, line 11.
Following: "Sections"
Strike: "21 and"
Insert: "20 through"

EXHIBIT # 8 HB 28

EXHIBIT
DATE 2/4/93
HB 287

THE MELOY LAW FIRM

Peter Michael Meloy
Janice S. VanRiper

P.O. Box 1241
80 South Warren
Helena, Montana 59624

Telephone:
(406) 442-8670
Facsimile:
(406) 442-4953

TO: House Labor and Employment Relations Committee

FROM: Jan VanRiper

RE: Proposed amendments to HB287, providing additional remedies against insurers that do not provide workers' compensation benefits in a timely fashion

DATE: 2/8/93

At the hearing on Feb. 4, 1993 I testified in support of Rep. Cocciarella's proposal to amend HB287 to include better remedies against insurers for failing to adequately and timely provide injured workers with benefits as provided by law. An example of the kinds of inadequate remedies we have now was given. Under separate cover, I supplied the Committee Secretary with a written version of that example. Several Committee members requested that I provide more specific suggested amendments with respect to providing better remedies.

What follows are those suggestions, albeit in outline form. Since several sections of the existing Workers' Compensation Act would be affected, I thought it best to leave the actual drafting of language up to the professional Legislative Council drafters. A copy of this is being provided to the Department of Labor and Industry for their consideration. Copies will also be provided to members of the House Select Committee on Workers' Compensation.

The amendments suggested are primarily in these areas:

(1) Expediting the mediations procedures somewhat, and allowing for further expediting in cases of emergency;

(2) Imposing on insurers the obligation to speedily obtain the information they need to pay medical claims, to authorize medical treatment and changes in claimant's physicians, and to make the payments and determinations in an expeditious manner; imposing penalties on insurers for failing to comply;

(3) Giving authority to the Department of Labor and Industry, the mediators and the Court to assess penalties and attorney fees against insurers where insurers have failed to provided benefits, but a claimant or his/her attorney has persuaded them to provide benefits short of actually going to court. This would get at the problem now in which insurers can "hold out" until the last minute, forcing claimants through all kinds of lengthy hoops, only to "cave in" before a court proceeding, incurring no penalty whatsoever; and,

(4) Requiring the Department to provide for ways of informing claimants of their basic rights and responsibilities under the Workers' Compensation and Occupational Disease Acts.

In addition, the Committee may wish to consider creating a "workers' compensation ombudsman". This person would be a highly knowledgeable person, located in the Department of Labor and Industry, whose function would be to answer calls from workers with questions about their claims, and with authority to pass complaints on to the appropriate insurer and to attempt to assist with solutions. The much-touted Oregon workers' compensation system has this feature. It would seem to provide a much needed service for claimants, and perhaps a feature which might alleviate the necessity for legal involvement in many claims. A copy of Oregon's law in this regard is provided.

It is also suggested that any fees, fines or penalties provided under these amendments be accounted for separately by insurers for the legislature's future information.

EXHIBIT - 8
2-4-93
HB-287

HB287
PROPOSED AMENDMENTS RELATING TO REMEDIES

I. EXPEDITING MEDIATION PROCEDURES.

A. Amend waiting requirements as follows:

- reduce time in which an insurer must respond to a written demand for benefits from 15 to 7 working days;

- reduce time an insurer has to respond to a written mediator's recommendation from 45 days to 7 working days.

B. Require the Department to reduce the time frames even further in emergencies.

II. IMPOSING UPON INSURERS AND PROVIDERS DUTIES WITH RESPECT TO PAYMENT OF MEDICAL BILLS AND AUTHORIZING TREATMENT; PROVIDING PENALTIES FOR NONCOMPLIANCE.

A. Require medical service providers to bill an insurance carrier first, in workers' compensation cases; to provide proper billing information and supporting information to allow an insurer to determine their liability for the medical claim (Department should further delineate what supporting documentation is required through rule); disallowing providers from billing a claimant until such information is supplied to an insurer and the insurer accepts or denies the claim;

B. Requiring an insurer, upon receipt of a medical bill, to immediately request, in writing and within 7 working days, any additional information needed to determine compensability of the claim; preventing an insurer from

billing a claimant pending the provision of the requested information;

C. Requiring an insurer to pay within 30 days after receipt of necessary information:

D. Providing that a medical service provider may not bill a claimant directly unless it is in receipt of a written denial from an insurer.

E. Requiring the insurer to send to a claimant copies of any requests for further information or denials under this section;

F. Preventing collection agencies in Montana from pursuing collection procedures against claimants without a written denial of compensability from an insurer;

G. Providing fines against insurers whose actions have caused unwarranted collection agency efforts against claimants;

H. Providing penalties against insurers for failure to pay according to these provisions, (Suggested fines: 1% per week of total bill to providers; 15% or more of bill to claimant where insurer's actions have caused them inability to obtain further medical services or to have been turned in to collection agencies);

I. Requiring insurers to inform claimants in writing within 7 working days of receipt of billing information (in cases of denial or delay), stating their reasons for any denial or delay.

J. Giving the Department authority to enforce these provisions by providing for speedy procedures for providers and claimants to contest nonpayment and non-authorizations, and for provisions of penalties; allowing

for even more expedited procedures in cases of emergencies.

III. GIVING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY, MEDIATORS, AND THE COURT, TO ASSESS PENALTIES AND ATTORNEY FEES AGAINST INSURERS WHERE INSURERS HAVE FAILED TO PROVIDE BENEFITS, BUT A CLAIMANT OR THE CLAIMANT'S ATTORNEY HAS PERSUADED THE INSURER TO PROVIDE BENEFITS SHORT OF AN ADMINISTRATIVE OR COURT DETERMINATION.

A. In cases where an insurer fails to pay compensation or other benefits (including the authorization of medical treatment and changes in physicians) when due, or denies the compensability of a claim, and the insurer pays or accepts liability or authorizes treatment or a change in physician due to the efforts of a claimant or the claimant's attorney, the insurer shall pay a reasonable attorney fee and costs, or, in the case of an unrepresented claimant, a reasonable reimbursement for the claimant's effort and for any costs incurred by the claimant.

B. Providing for penalties in the amount of 20% of any benefits, acceptances of liability or authorization of treatment in cases where the insurer's denial, delay or failure to authorize has been unreasonable.

C. Providing that the insurer's failure to comply with 39-71-2401(4)(b), or these new sections regarding payment of medical bills is prima facia evidence that an insurer's actions have been unreasonable.

D. Granting the Department authority to award fees, costs and penalties pursuant to this section. (Appropriate provisions of the statutes regarding the workers' compensation court would also have to be amended to be consistent with these provisions.)

IV. REQUIRE THE DEPARTMENT TO PROVIDE FOR METHODS OF INFORMING CLAIMANTS OF THEIR RIGHTS AND RESPONSIBILITIES UNDER THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS.

A. Granting the Department the authority and responsibility to insure that claimants and potential claimants have access to and receive information about their rights and responsibilities under the W.C. and O.D. Acts by:

- Developing and revising forms for use by insurers, providers and claimants;

- Requiring insurers and employers to provide certain information to injured workers and claimants;

B. Failure by an insurer to comply with Departmental rules adopted pursuant to this section shall be punishable, at the Department's discretion, by a fine not less than $100 nor more than $1000 per occurrence.

C. The Department shall adopt rules pursuant to subsection (A), and to provide for procedures for imposing fines pursuant to subsection (B).

c.839 §16; 1981 c.674 §11; 1985 c.770 §8; 1987 c.373 §38a; 1990 c.2 §37]

OREGON WORKERS' COMPENSATION STATUTES

656.708 Hearings Division; duties. The Hearings Division is continued within the board. The division has the responsibility for providing an impartial forum for deciding all cases, disputes and controversies arising under ORS 654.001 to 654.295 and 654.750 to 654.780, all cases, disputes and controversies regarding matters concerning a claim under this chapter, and for conducting such other hearings and proceedings as may be prescribed by law. [1977 c.804 §25; 1979 c.839 §17; 1987 c.373 §39]

2-4-93 HB-2877

656.709 Ombudsman for injured workers; ombudsman for small business; duties. (1) The office of ombudsman for injured workers is created in the department. The ombudsman shall report directly to the director. The ombudsman shall act as an advocate for injured workers by accepting complaints concerning matters related to workers' compensation, investigating them and attempting to resolve them. The ombudsman shall also provide information to injured workers to enable them to protect their rights in the workers' compensation system.

(2) The office of ombudsman for small business is created in the department. The ombudsman shall report directly to the director. The ombudsman shall provide information and assistance to small businesses with regard to workers' compensation insurance and claims processing matters. [1987 c.884 §60b; 1990 c.2 §38]

656.710. [1977 c.699 §2; 1979 c.839 §18; repealed by 1981 c.535 §26]

656.712 Workers' Compensation Board; members; qualifications; confirmation; term; vacancies. (1) The Workers' Compensation Board, composed of three members appointed by the Governor, is created within the department. Not more than two members shall belong to one political party and inasmuch as the duties to be performed by the members vitally concern the employers, the employees, as well as the whole people, of the state, persons shall be appointed as members who fairly represent the interests of all concerned.

(2) A member of the board shall be appointed for a term of four years on the first Monday in December of each year next preceding the expiration of the term of a member. Each member shall hold office until a

Article III of the Oregon Constitution. [Formerly 656.402; 1973 c.792 §28; 1977 c.109 §3; 1977 c.804 §26; 1981 c.535 §43; 1987 c.373 §40]

Note: Sections 2 to 4, chapter 954, Oregon Laws 1991, provide:

Sec. 2. Notwithstanding ORS 656.712:

(1) The Governor shall appoint, not later than August 1, 1991, two individuals who are well qualified by training and experience to serve, for the biennium beginning July 1, 1991, as members of the Workers' Compensation Board.

(2) Appointments pursuant to this section shall be made so that of the members so appointed, together with members appointed pursuant to ORS 656.712, two members shall represent the interests of employees, two members shall represent the interests of employers and one member shall not represent the interests of either employees or employers.

(3) Individuals appointed pursuant to this section are subject to ORS 656.716.

(4) The term of office of each individual appointed pursuant to this section, unless sooner terminated pursuant to ORS 656.714, shall cease June 30, 1993.

(5) Individuals appointed pursuant to this section are subject to confirmation by the Senate pursuant to ORS 171.562 and 171.565.

(6) Notwithstanding ORS 236.145, if an individual appointed pursuant to this section is a referee, that individual shall be entitled to return to employment as a referee with accumulated seniority when the term of service as a board member ends.

(7) Individuals appointed as board members pursuant to this section have all the duties, functions and powers of board members appointed pursuant to ORS 656.712.

(8) Any vacancy in an appointment made pursuant to this section shall be filled by appointment by the Governor. [1991 c.954 §2]

Sec. 3. Notwithstanding ORS 656.718, in exercise of authority to decide individual cases, members of the Workers' Compensation Board appointed pursuant to ORS 656.712 and sections 2 and 4 of this 1991 Act may sit together or in panels. A decision of a panel shall be by a majority of the panel. When sitting en banc, the concurrence of a majority of the members participating is necessary to render a decision. No board member appointed pursuant to section 2 or 4 of this 1991 Act shall review any case in which the member acted as a referee in the case. [1991 c.954 §3]

Sec. 4. (1) Notwithstanding ORS 656.712, the Workers' Compensation Board, by unanimous consent, may appoint up to two individuals who are well qualified by training and experience to serve temporarily as members of the board to assist in the performance of board duties, functions and powers.

(2) Individuals appointed pursuant to this section are subject to ORS 656.716, but are not subject to ORS 656.712.

(3) Unless appointed for a shorter term, the term of office of each individual appointed pursuant to this section shall not exceed 180 days from the date of appointment.

(4) Notwithstanding ORS 236.145, if an individual appointed pursuant to this section is a referee, that in-

Insert: "last approval"

24. Page 32, line 24.
Following: "in"
Insert: "Title 39, chapter 71,"
Following: "24"
Insert: ","
Strike: "of this chapter"

25. Page 35, line 16 through page 36, line 5.
Strike: Section 22 in its entirety
Renumber: subsequent sections

26. Page 36, line 6.
Following: line 5
Insert: " NEW SECTION. Section 20. Specific claims expenditures codes. The state fund shall account for different kinds of claims and administrative expenses separately. Payments made to claimants and their designated health care providers must be accounted for separately from payments to providers and vendors of services hired by the state fund. The state fund shall specifically account for the following costs separately:

(1) payments to health care providers for independent medical evaluations or other services provided at the request of the state fund;

(2) payments to medical panels;

(3) payments to rehabilitation providers for services performed at the request of the state fund;

(4) payments made for retraining or on-the-job training programs and other rehabilitation payments made to injured workers;

(5) payments made in-house or for contracted legal counsel; and

(6) payments to private investigators and other service providers made in connection with fraud investigation.""
Renumber: subsequent sections

27. Page 36, line 9.
Page 36, line 11.
Following: "Sections" or "sections"
Strike: "21 and 22"
Insert: "19 and 20"

28. Page 36, line 12.
Following: line 11
Insert: " NEW SECTION. Section 23. Effective date. [This act] is effective July 1, 1993."

Amendments to House Bill No. 287
First Reading Copy

Requested by Rep. Cocchiarella
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
February 1, 1993

1. Title, page 1, lines 19 through 21.
Following: ";" on page 19
Strike: remainder of line 19 through ";" on line 21

2. Title, page 2, lines 13 and 14.
Strike: "AND" on line 13 through "CERTIFICATION" on line 14

3. Title, page 2, line 14.
Following: ";"
Insert: "PROVIDING FOR SPECIFIC CLAIMS EXPENDITURES CODES;"

4. Title, line 16.
Strike: "39-71-505,"

5. Page 19, lines 12 through 23.
Strike: section 7 in its entirety
Renumber: subsequent sections

6. Page 35, line 17 through page 36, line 5.
Strike: "(1)" on page 35, line 17 through the remainder of section 22
Insert: "Each insurer is required to designate at least one adjuster who shall maintain an office in Montana, shall pay compensation when due, and has authority to adjust and settle claims."

7. Page 36, line 6.
Following: line 5
Insert: " NEW SECTION. **Section 22. Specific claims expenditures codes.** The state fund shall account for different kinds of claims and administrative expenses separately. Payments made to claimants and their designated health care providers must be accounted for separately from payments to providers and vendors of services hired by the state fund. The state fund shall specifically account for the following costs separately:

(1) payments to health care providers for independent medical evaluations or other services provided at the request of the state fund;

(2) payments to medical panels;

(3) payments to rehabilitation providers for services performed at the request of the state fund;

(4) payments made for retraining or on-the-job training programs and other rehabilitation payments made to injured workers;

(5) payments made in-house or for contracted legal counsel;

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor COMMITTEE BILL NO. HB 287

DATE Feb. 4, 1993 SPONSOR(S) Wiseman

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CHUCK HUNTER	DOLI	✓	
Tom Hark	MTMA		
Dan Van Riper	self	✓	
George Wood	MT Self Insurers Assoc	✓ Amended	
Mike McGee	MMCA	✓	
Russell Hill	MTLA	✓	
Jim Tillotson	MT Chamber	✓ AS AMEND.	
Gary Spaeth	Liability Coalition	X	
Ken Williams	MPC/Entech	✓ with Amendment	
DAN WALKER	US WEST	✓	
Jacqueline J. Benmark	American Insurance Assoc	✓ w/ some amdt	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

argue that the only way to evaluate risk is by payroll. The risk has nothing to do with how much money one makes, but how long they have been working.

REP. TUNBY stated that he thinks this risk is already figured into each individual classification.

REP. DRISCOLL restated the fact that if an individual works overtime, the rate does not go up.

REP. GALVIN brought up the scenario given by **REP. SIMON** during the hearing of HB 458 about standing in front of a train. He asked what risk he would have if he was the driver of that train.

REP. HANSON asked the committee to remember what we are discussing here. He stated that this bill is not changing the whole system, but just the construction industry.

REP. MILLS stated that these employees receive the same risk factor, regardless of their pay. He stated that we are already $500 million in the hole now.

Motion/Vote:

REP. PAVLOVICH called for the question. The motion to DO PASS AS AMENDED **FAILED** with a tie vote of 8 to 8. The bill will remain in the committee until further action is taken.

EXECUTIVE ACTION ON HB 472

Motion: **REP. TUNBY MOVED HB 472 DO PASS. REP. SIMON MOVED THE AMENDMENTS.** The question was called for on the amendments. The motion to DO PASS **CARRIED** unanimously.

Discussion:

There was a concern by the committee about the definition or words direct supervision on the amendment.

Motion/Vote:

They changed the wording and the question was called for. The motion to DO PASS the amendment **CARRIED** unanimously. The question was called for on the bill. The motion to DO PASS AS AMENDED **CARRIED** 14 to 2. HB 472 was DO PASS AS AMENDED.

EXECUTIVE ACTION ON HB 287

Motion: **REP. BENEDICT MOVED HB 287 DO PASS.**

Discussion:

Susan Fox, Legislative Council, referred to the amendments. She

read each separate amendment and went over them with the committee.

REP. BENEDICT stated that these were all good amendments and moved the amendments. The motion to move the amendments carried unanimously.

The Spaeth amendments were discussed by the committee.

REP. PAVLOVICH called for the question. The motion to DO PASS the Spaeth amendments **CARRIED** 15 to 1.

The Cocchiarella amendments were discussed by the committee.

REP. COCCHIARELLA called for the question on numbers 1, 2 and 6 of the amendments. The motion to DO PASS **FAILED** 7 to 9.
REP. COCCHIARELLA called for the question on number 3 and 7 of the amendments. The motion to DO PASS **CARRIED** unanimously.

REP. DRISCOLL called for the question on number 4 and 5 of the amendments. The motion to move these carried unanimously.

Motion/Vote: **REP. PAVLOVICH** called for the question on the bill. The motion to DO PASS AS AMENDED **CARRIED** 14 to 2.

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL DATE 2/11/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS	✓		
REP. TIM WHALEN	✓		

11. Page 17, line 11.
Page 22, line 25.
Strike: "administration and"

12. Page 17, line 14 through page 19, line 23.
Strike: Sections 6 and 7 in their entirety
Renumber: subsequent sections

13. Page 23, line 7.
Strike: "in"
Strike: "employment"
Insert: "to employ"

14. Page 24, lines 1 and 2.
Strike: "used" on line 1 through "deposit" on line 2

15. Page 24, lines 18 and 19.
Strike: "is" on line 18 through "or" on line 19

16. Page 24, line 20.
Strike: "required"
Insert: "expected"

17. Page 24, line 21.
Strike: "fiscal"

18. Page 25, lines 7 through 10.
Following: "department" on line 7
Strike: the remainder of line 7 through "year" on line 10

19. Page 25, line 12.
Strike: "or undertaking"

20. Page 25, lines 13 and 14.
Following: "with" on line 13
Strike: "two" on line 13 through "sureties" on line 14
Insert: "a surety"

21. Page 25, line 17.
Strike: "fiscal"
Strike: "or"

22. Page 25, line 21.
Following: "solvent"
Insert: "; or
(iii) other security deposits allowed in subsection (1)(a)"

23. Page 31, line 22.
Strike: "policy"

HOUSE STANDING COMMITTEE REPORT

February 12, 1993

Mr. Speaker: We, the committee on Labor report that House Bill 287 (first reading copy -- white) do pass as amended .

Signed: _____
Tom Nelson, Chair

And, that such amendments read:

1. Title, page 1, lines 17 through 21.
Following: ";" on line 17
Strike: remainder of line 17 through "FUND;" on line 21.

2. Title, page 2, lines 13 and 14.
Strike: "THE" on line 13 through "ADJUSTERS" on line 14
Insert: "SPECIFIC CLAIMS EXPENDITURES CODES"

3. Title, page 2, line 16.
Strike: "39-71-504, 39-71-505,"

4. Title, page 2, line 18.
Following: ";"
Strike: "AND"

5. Title, page 2, line 19.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

6. Page 9, line 10.
Strike: "prior"

7. Page 13, line 21.
Strike: "and"

8. Page 13, line 24.
Strike: "be or"
Insert: "the public that the person"

9. Page 13, line 25.
Strike: "considered"

10. Page 14, line 3.
Strike: "a personal"
Insert: "an"

Committee Vote:
Yes ___, No ___.

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL VOTE

DATE 2/11/93 BILL NO. HB 287 NUMBER _____

MOTION: _____

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN		✓
REP. GARY FELAND, VICE CHAIRMAN		✓
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. JERRY DRISCOLL	✓	
REP. ALVIN ELLIS		✓
REP. PAT GALVIN	✓	
REP. SONNY HANSON		✓
REP. NORM MILLS		✓
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON		✓
REP. CAROLYN SQUIRES	✓	
REP. BILL TASH		✓
REP. ROLPH TUNBY		✓
REP. CARLEY TUSS	✓	
REP. TIM WHALEN	✓	

Amendment
7 9

and

(6) payments to private investigators and other service providers made in connection with fraud investigation."

Renumber: subsequent sections

8. Page 36, line 9.
Page 36, line 11.
Following: "Sections"
Strike: "21 and"
Insert: "20 through"

Amendments to House Bill No. 287
First Reading Copy

Requested by the subcommittee on HB 287
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
February 9, 1993

1. Title, page 2, line 18.
Following: ";"
Strike: "AND"

2. Title, page 2, line 19.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 9, line 10.
Strike: "prior"

4. Page 13, line 21.
Strike: "and"

5. Page 13, line 24.
Strike: "be or"
Insert: "the public that the person"

6. Page 13, line 25.
Strike: "considered"

7. Page 14, line 3.
Strike: "a personal"
Insert: "an"

8. Page 17, line 11.
Page 22, line 25.
Strike: "administration and"

9. Page 23, line 7.
Strike: "in"
Strike: "employment"
Insert: "to employ"

10. Page 24, lines 1 and 2.
Strike: "used" on line 1 through "deposit"

11. Page 24, lines 18 and 19.
Strike: "is" on line 18 through "or" on line 19

12. Page 24, line 20.
Strike: "required"
Insert: "expected"

13. Page 24, line 21.
Strike: "fiscal"

14. Page 25, lines 7 through 10.
Following: "department" on line 7
Strike: the remainder of line 7 through "year" on line 10

15. Page 25, line 12.
Strike: "or undertaking"

16. Page 25, lines 13 and 14.
Following: "with"
Strike: "two" on line 13 through "sureties" on line 14
Insert: "a surety"

17. Page 25, line 17.
Strike: "fiscal"
Strike: "or"

18. Page 25, line 21.
Following: "solvent"
Insert: "; or
(iii) other security deposits allowed in subsection (1)(a)"

19. Page 31, line 22.
Strike: "policy"
Insert: "last approval"

20. Page 32, line 24.
Following: "in"
Insert: "Title 39, chapter 71,"
Following: "24"
Insert: ","
Strike: "of this chapter"

21. Page 36, line 12.
Following: line 11
Insert: " NEW SECTION. **Section 25. {standard} Effective date.**
[This act] is effective July 1, 1993."

2/11/93

Representative Feland has my proxy to vote on any bills in executive session. Further, he is instructed to vote NO on any bills of work-comp or unemployment compensation funds.

Allen Allen Jr.

Ignite my prayer to
God [illegible] all that
we have, [illegible]
just [illegible]

Amen

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL VOTE

DATE 2/11/93 BILL NO. HB 387 NUMBER

MOTION: DO PASS AS AMENDED

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN	✓	
REP. GARY FELAND, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT	✓	
REP. VICKI COCCHIARELLA	✓	
REP. JERRY DRISCOLL		✓
REP. ALVIN ELLIS	✓	
REP. PAT GALVIN	✓	
REP. SONNY HANSON	✓	
REP. NORM MILLS	✓	
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON	✓	
REP. CAROLYN SQUIRES	✓	
REP. BILL TASH	✓	
REP. ROLPH TUNBY	✓	
REP. CARLEY TUSS	✓	
REP. TIM WHALEN		✓

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Tom Towe, Chair, on March 4, 1993, at 3:06 PM

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 287, HB 259.
Executive Action: None.

HEARING ON HB 287

Opening Statement by Sponsor:

Representative William Wiseman, House District 33, told the Committee he would not reserve the right to close. He said HB 287 dealt with workers' compensation PLANS 1, 2, and 3.

Proponents' Testimony:

Chuck Hunter, Montana Department of Labor and Industry (DOLI), said HB 287 was drafted at the request of DOLI. He submitted written testimony (Exhibit #1).

George Wood, Executive Secretary, Montana Self Insurers' Association, said HB 287 was a good Bill without amendments.

George Bennett, Montana Bankers' Association, submitted written testimony (Exhibit #2).

Oliver Goe, an attorney with Browning, Kaleczyc, Berry & Hoven in Helena, representing Montana Municipal Insurance Authority (MMIA), Montana Association of Counties (MACO), Montana School Groups Insurance Authority (MSGIA), told the Committee MMIA, MACO, and MSGIA were self-insurance pools. He said these insurers are unique because they are funded by tax dollars. These organizations support HB 287, but have problems with Section 2. Mr. Goe said this section dealt with assessment, and the organizations he represented were concerned with the assessment cost. The insurers are required to pay the assessment cost. He handed out a breakdown of these assessment costs (Exhibit #3) and amendments proposed that dealt with assessment cost containment (Exhibit #4, Exhibit #5).

Russell Hill, American Trial Lawyers' Association told the Committee in Section 7 the $2500 schedule benefit for disfigurement has been in place since 1965, and in Section 16 the $10,000 occupational disease benefit has been in place since 1987. He said some benefits in workers' compensation were constantly shrinking.

Pat Sweeney, State Fund, said the fund was in support of HB 287 except for Section 20. Section 20 was amended to require the State Fund to provide separate data collection for various items. He said there was no meaningful purpose of Section 20. He asked the Committee to amend Section 20 to include the entire workers' compensation system or remove the section in its entirety.

Jan Van Riper, workers' compensation attorney, said Section 20 was amended in response to concern of where money was going into the system. She said there was concern that not all the money from certain claims were actually going to the appropriate funds. She said Representative Cocchiarella had proposed the amendments. Ms. Van Riper also said she could not think of a reason Representative Cocchiarella would not agree with an amendment to include all of workers' compensation system.

Bill Christianson, Risk Manager, Schools Group Workers' Compensation Program, told the Committee HB 287 contained language that pertained to the assessment method to PLANS 1, 2 and 3. He offered amendments to this language (Exhibit #6).

Roger Tippy, Independent Bankers' Association, told the Committee the association supported HB 287.

Jacqueline Lenmark, American Association (AIA), told the Committee AIA supported HB 287 as it was amended in the House, but would not support amendments to Sections 2 or 20. She said Section 20 should not be amended to include the entire workers' compensation system.

Opponents' Testimony:

Jock Anderson, Montana League of Savings Institutions, told the Committee the league stood in opposition to Section 6. He said he supported the amendments offered by George Bennett (Exhibit #2). He said the lien would be against real and personal property in HB 287 as currently drafted. When liens by lenders or when personal property is transferred, the search of liens against the property normally encompasses a $5 to $7 check with the Secretary of State's Office. If an institution would be required to search for liens that may be recorded as judgements, the search would go through a title company at $50 to $100 per search. This would increase the cost of loans. He said there was a tendency on behalf of government agencies to ask for the equivalent of judgments without requisite equivalent due process.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Chuck Hunter if he agreed with the amendments. Mr. Hunter said the Montana Department of Labor and Industry liked HB 287 in the current form.

Senator Blaylock asked George Wood what he thought of the amendments. Mr. Wood answered he thought HB 287 was good in its current form. He said the MSIA would not support the school board amendments, and thought the other amendments offered would cause problems.

Senator Aklestad stated he had problems with Section 6. He asked Chuck Hunter why the statute of limitations on the judgment was 10 years. Mr. Hunter answered Section 6 was borrowed verbatim from the Unemployment Insurance Collection Code. Currently claims against uninsured employers had to go through the county attorney. These attorneys are very busy, and there needs to be an administrative procedure to collect the debts owed to the workers' compensation system. Mr. Hunter continued the legislative researchers had decided due process was outlined sufficiently in HB 287. He said it was the feeling of DOLI Section 6 would work.

Senator Aklestad asked Chuck Hunter if he would give the Committee an example of the due process in the system. Mr. Hunter said he was unfamiliar with the procedure. He said as he remembered if there was a debt and the employer was contacted repeatedly to pay, and the DOLI announced it would effect a lien unless there was a response by the employer, and the response was not made, the judgment was entered with the Clerk of the Court. Once entered, the judgment is sent to the sheriff for service.

Senator Towe asked Chuck Hunter when the employer got a hearing. Mr. Hunter answered the hearing was at any time during the process.

Senator Towe asked Chuck Hunter what happened if the certified mail used to notify the employer was not served. Mr. Hunter answered the DOLI would enter the lien.

Senator Aklestad asked Mr. Hunter if DOLI wrote in the notification letters that the department had the ability to seize property. Mr. Hunter answered he was not sure if this was included in the letters. Senator Aklestad said DOLI had a bad reputation and this would make it worse.

Senator Aklestad asked Mr. Hunter if DOLI could do anything without adding another FTE to the Bill. Mr. Hunter said the original bill had Section 20 as one that would enable DOLI to begin regulating the services of adjusters. He said since that section was stricken, the FTE was no longer in HB 287.

Senator Towe asked Mr. Hunter if the employer could be given an administrative hearing, and then have the decision transferred to District Court, and record it like a foreign judgment. Mr. Hunter answered there may be another method of collecting debts owed to the system. He said the Unemployment Insurance Fund (UIF) had tried for many legislative sessions to find a collection process that worked for personal property, and the provisions in HB 287 were similar to the provisions in UIF.

Senator Towe said the simplest way to carry out obligations to due process was to send out a notice that told of the employer's right to a hearing. If the person did not want a hearing, the right to have a hearing could be waived, and there would be the administrative decision to transfer to a District Court.

Senator Towe asked Mr. Hunter if this method would work. Mr. Hunter answered this was like the system DOLI had in place.

Senator Towe asked George Bennett if the system he had described satisfied his concerns. Mr. Bennett answered what he was concerned about was Subsection 2(b). An innocent lender or buyer would have to get an affidavit before the fact in order to protect a purchase or lien. He said he would like to see a centralized filing of liens so everyone could know what liens were out.

Senator Towe asked Roger Tippy if he would like to comment. Mr. Tippy said he agreed with Mr. Bennett that Subsection 2(b) was a concern. He continued HB 287 may not have all fifteen elements that would make it meet the due process definition, but the Bill had enough of them that people would agree with it.

Senator Towe asked Oliver Goe if the limit on assessments he wished to put in was outside the scope of HB 287. Mr. Goe said

the assessment section was contained within the Bill, and it was designed to clarify who was the subject of an administrative assessment. He said HB 287 was the only bill before the Legislature specifically designating MCA 39-71(201). He said the concern of his organizations was that assessment costs were continuing to grow.

Senator Towe asked Chuck Hunter why the repealers dealing with PLAN 1 and PLAN 2 relief from liability had been taken out of the Bill. Mr. Hunter answered those sections were amended out because they were not used and should not be used. He told the Committee there may be problem of assessing the cost of the claim over time. Thus the section was taken out of the law.

Senator Towe asked if the self-insurers objected. George Wood answered they did not.

Senator Keating asked Chuck Hunter for a definition of "exclusive remedy." Mr. Hunter told the Committee this would be defined as the sole remedy that an employee has for getting benefits.

Senator Keating asked Chuck Hunter if an employer is uninsured, in accordance with state law, could the person not be sued for liability. Mr. Hunter answered the law specifically said if an employer is uninsured, the employer may be sued for liability.

Senator Keating said the Constitution provided that if an employer provided workers' compensation, the employer was exempt from liability. If an employer is uninsured, the employer could go to the uninsured account, pay double premiums, and be in accordance with state law. He said the uninsured provision was a remedy.

Mr. Hunter said within the uninsured provision in the Bill, the law provides where the worker may sue for damages through the civil court system.

Closing by Sponsor:

Representative Wiseman had waived his right to close.

HEARING ON HB 259

Opening Statement by Sponsor:

Representative Dore Schwinden, House District 20, told the Committee HB 259 was an act clarifying that an employee injured while participating in a recreational activity at the place of employment is not eligible to receive workers' compensation.

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. **DATE** 3/4/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GARY AKLESTAD	X		
SENATOR TOM KEATING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR J.D. LYNCH	X		
SENATOR JIM BURNETT	X		
SENATOR BILL WILSON	X		
SENATOR TOM TOWE	X		

Attach to each day's minutes

Amendments to House Bill No. 287
Third Reading Copy

Requested by Senator Lynch
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
March 5, 1993

1. Title, page 2, lines 14 through 16.
Following: "MEDIATION;" on line 14
Strike: remainder of line 14 through "CODES;" on line 16

2. Page 36, line 14 through page 37, line 9.
Strike: section 20 in its entirety
Renumber: subsequent sections

3. Page 37, line 13.
Strike: "Sections"
Insert: "Section"
Strike: "AND 20"
Strike: "are"
Insert: "is"

4. Page 37, lines 15 and 16.
Strike: "sections" on line 15
Insert: "section"
Strike: "AND 20" on line 16

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3/4/93
BILL NO. HB 287

House Bill 287
Synopsis of Section Content

Section 1: Definitions

Section 2: Separates funds for Subsequent Injury and Uninsured Employers Fund from Workers' Compensation Administrative Fund, and provides for assessment to all plan 1s and 2s.

Section 3: Allows Uninsured Employers Fund to issue subpoenas.

Section 4: Exempts person working for indian employer on indian lands from coverage.

Section 5: Provides for statutory appropriation of benefits for Uninsured Employers Fund.

Section 6: Provides for the filing of liens for debts owed to the Uninsured Employers Fund.

Section 7: Clarifies how disfigurement awards are made.

Section 8: Provides that the administrative costs of the Subsequent Injury Fund must be paid out of that fund.

Section 9: Provides for statutory appropriation of benefits from the Subsequent Injury Fund.

Section 10: Provides that the department may set staggered renewal dates for Plan 1 applications.

Section 11: Requires security deposits placed with the department to be in book entry form.

Section 12: Allows the department to use the National Council of Compensation Insurers to be the department's agent for notice of coverage.

Section 13: Same as above, except for notice of cancellation of coverage.

Section 14: Provides that the department may cash a maturing security and retain the funds until the security is replaced by the insurer. Also provides that the department can transfer the security to the Montana Insurance Guarantee Association in the event of an insolvency.

Section 15: Provides that a self-insurer's assessment is based upon compensation paid during the preceding policy year rather than the preceding 12 months.

Section 16: Clarifies how a lump sum payment for a non-disabling occupational disease may be made, and specifies that mediation procedures shall be used in the event of a dispute.

Section 17: Clarifies that the party requesting an autopsy shall be the party that pays for the autopsy under the occupational disease act.

Section 18: Places the Subsequent Injury Fund and the Uninsured Employers Fund in the list of statutory appropriations.

Section 19: Provides a time limit for benefit appeals regarding the Uninsured Employers Fund.

Section 20: Section dealing with State Fund accounting.

Section 21: Repealer.

Section 22: Codification instructions.

Section 23: Effective date.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3/4/93
BILL NO. HB 287

WITNESS STATEMENT
HOUSE BILL 287

Name: GEORGE T. BENNETT HOUSE BILL 287 Date: March 4th, 1993

Address: 111 N. Last Chance Gulch, Arcade Bldg 3-1, Helena, MT 59601
Telephone 442-369

Whom do you represent? MONTANA BANKERS ASSOCIATION

Support with amendment as suggested below.

This prepared statement to be left with Secretary.

PROPOSED AMENDMENTS:

Propose the following amendments to Second Reading Bill, Section 6, pages 20 and 21:

Page 20, line 17, after phrase "a lien upon all real" strike words "and personal" and,

Pages 20 and 21, strike all of subsection (2).

PURPOSE FOR AMENDMENTS:

Under Section 39-71-506 MCA, as now effective, the department must bring a law suit to collect amounts due from employers.

The purpose of Section 6 of the Bill is to amend this section to give the department the authority to obtain a judgment by filing with the clerk of court a "certificate" showing the amounts due; and thereby allowing the department to obtain a judgment lien pursuant to Section 25-9-301 MCA.

However Section 25-9-301 MCA, copy attached, only creates a lien against real property, not personal property and for a variety of practical reasons.

This judgment, can be enforced by the department, as to personal property, by having a writ of execution issued so that personal property can be subjected to the payment of the judgment. The Department of Revenue has a somewhat similar procedure by warrant of distraint, see attached statutes, Sections 15-1-701 MCA, et seq.

Under Montana law, the way that a lien is created in personal property is by possession, filing with the Secretary of State, or, as to motor vehicles, by filing with the Registrar of Motor Vehicles, Department of Justice.

We would suggest that if other state agencies are going to be granted the authority to obtain a judgment by filing a document with the clerk of the court , that a uniform procedure be used patterned after that used for some II years by the Department of Revenue under the statutes cited and attached hereto.
The purpose of these amendments is to clarify that the innocent purchaser and lien holder is protected. The department with a judgment can reach personal property by execution and garnishment.

3-4-93
HB 287

Part Cross-References
"Judgment book" defined, 3-5-507.
Docket, 3-5-508.
Docket to be available for inspection, 3-5-509.
Execution of lien upon real property, 25-13-305.
Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-9-301. Docketing of judgment — lien. (1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time or which he may afterward acquire until the lien ceases. The lien continues for 6 years unless the judgment be previously satisfied.

History: En. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 671; re-en. Sec. 9410, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, December 10, 1965, eff. January 1, 1966; R.C.M. 1947, 93-5708.

Cross-References
Liens, Title 71, ch. 3.

25-9-302. Filing of transcript of docket in another county. A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgmen

e, sentence, or provision of this compact is declared to be contrary to the itution of any state or of the United States or if the applicability thereof any government, agency, person, or circumstance is held invalid, the dity of the remainder of this compact and the applicability thereof to any rnment, agency, person, or circumstance shall not be affected thereby. If compact shall be held contrary to the constitution of any state participat- g therein, the compact shall remain in full force and effect as to the ining party states and in full force and effect as to the state affected as severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973; amd. Sec. 1, Ch. 3, L. 1975; R.C.M. 1947, 84-6701.

5-1-602. Montana compact commissioner — director of revenue. ne director of the department of revenue shall represent this state on the ultistate tax commission.

story: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973; R.C.M. 1947, 2.

15-1-603. Alternate. The member representing this state on the multi- tax commission may be represented thereon by an alternate designated m.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973; R.C.M. 1947, -6703.

-1-604. Not codified. Committee abolished. Sec. 1, 82A-1806, Ch. 272, 1971.

History: En. Sec. 4, Ch. 17, L. 1969; amd. Sec. 27, Ch. 453, L. 1977; R.C.M. 1947, -6704.

Part 7

Collection of Delinquent Taxes — Warrant for Distraint

-1-701. Warrant for distraint. (1) A warrant for distraint is an order, ider the official seal of the department of revenue or of the department of ansportation, directed to a sheriff of a county of Montana or to an agent rized by law to collect a tax. The order commands the recipient to levy ourand sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against l and personal property of the delinquent taxpayer located in the county the warrant is filed. The resulting lien is treated in the same manner a properly docketed judgment lien, and the department may collect delin- ent taxes and enforce the tax lien in the same manner as a judgment is ed.

A warrant may be issued for the amount of unpaid tax plus penalty, ny, and accumulated interest. The lien is for the amount indicated on the nt plus accrued interest from the date of the warrant.

tory: En. Sec. 1, Ch. 439, L. 1981; amd. Sec. 11, Ch. 512, L. 1991.

EXHIBIT 2
3-4-93
HB 257

Compiler's Comments

1991 Amendment: In (1), near beginning after "department of revenue", inserted "or of the department of transportation"; and made minor changes in style. Amendment effective July 1, 1991.

15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703.

History: En. Sec. 2, Ch. 439, L. 1981; amd. Sec. 1, Ch. 131, L. 1989.

15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

History: En. Sec. 3, Ch. 439, L. 1981.

15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

History: En. Sec. 4, Ch. 439, L. 1981.

15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that he disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed.

History: En. Sec. 5, Ch. 439, L. 1981; amd. Sec. 4, Ch. 811, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "right to a review of the tax liability pursuant to 15-1-211" for "right to request a hearing on the matter of tax liability"; in (2), in first sentence, substituted "review" for "hearing", deleted former second sentence that read: "A request for a hearing must be made in writing within 30 days of the date of the notice", and substituted last sentence relating to requirement that review process and appeals be completed before warrant may be executed for former last sentence that read: "If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled"; and deleted (3) that read: "(3)

ring is subject to the contested case sions of the Montana Administrative Pro- e Act. Before a decision may be appealed district court, an appeal must first be the state tax appeal board. A request earing must be in writing in order to one execution on a warrant".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

1-706. **Execution upon warrant.** (1) Upon receipt of a copy of the warrant and notice from the department that the applicable hearing isions have been complied with, the sheriff or agent authorized to collect tax shall proceed to execute upon the warrant in the same manner as ibed for execution upon a judgment.

2) A notice of levy may be made by means of a certified letter by an agent orized to collect the tax. An agent is not entitled to any fee or compensa- excess of actual expenses incurred in enforcing the warrant.

A sheriff or agent shall return a warrant, along with any funds cted, within 90 days of the date of the warrant.

4) If the warrant is returned not satisfied in full, the department has the remedies to collect the deficiency as are available for any civil judgment.

History: En. Sec. 6, Ch. 439, L. 1981.

s-References
ecution of judgment, Title 25, ch. 13.

5-1-707. **Emergency execution upon warrant.** (1) The department execute upon a filed warrant for distraint without providing an opportu- or a hearing prior to execution if the department determines that the tion of the tax is jeopardized because of the delay imposed by the hearing uirement.

2) When the provisions of this section are utilized, the department must the taxpayer and inform the taxpayer that he has a right to request a ring to be held subsequent to execution. A hearing, if desired, must be uested in writing within 30 days of the date of the notice and, if requested, be held as soon as possible. The commencement of a proceeding under 705 does not preclude the use of the provisions of this section if the artment determines that such action is appropriate.

History: En. Sec. 7, Ch. 439, L. 1981.

5-1-708. **Release of lien.** (1) Upon payment in full of the unpaid tax s penalty, if any, and accumulated interest, the department shall release ien acquired by filing the warrant for distraint.

2) Upon partial payment or whenever the department determines that elease or partial release of the lien will facilitate the collection of the unpaid penalty, and interest, the department may release or may partially se the lien acquired by filing the warrant for distraint. The department release the lien if it determines that the lien is unenforceable.

History: En. Sec. 8, Ch. 439, L. 1981.

5-1-709. **Remedy not exclusive.** The use of the warrant for distraint vided for in 15-1-701 through 15-1-708 is not exclusive, and the depart- nt may use any other remedy provided by law for the collection of tax debts.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 3/4/93
BILL NO. HB 287

EXHIBIT A

SCHEDULE OF FISCAL YEAR 1992 ACTUAL COSTS AND FACTORS

FUNCTIONS	Costs & Factors	Plan I	Plan II	Plan III
LEGAL FUNCTIONS:				
1. WORKERS COMPENSATION COURT				
Actual: # of Petitions filed	389	39	99	251
Percent of Total	100.00%	10.03%	25.45%	64.52%
Total Cost	$357,241.98	$35,831.37	$90,918.08	$230,492.53
2. HEARINGS				
Actual: # of Cases	163	28	27	108
Percent of Total	100.00%	17.18%	16.56%	66.26%
Total Cost	$245,225.87	$42,129.81	$40,609.40	$162,486.66
INSURANCE COMPLIANCE:				
3. ADMINISTRATION/CLERICAL SUPPORT				
Actual: Percent of FY 92 Total Actual Expenses	100.00%	20.58%	41.95%	37.47%
Total Cost	$385,559.85	$79,348.22	$161,742.36	$144,469.28
4. CLAIMS MANAGEMENT				
Actual: # of Orders Processed & Files Reviewed	14,040	1,586	3,421	9,033
Percent of Total	100.00%	11.30%	24.37%	64.33%
Total Cost	$230,492.37	$26,045.64	$56,170.99	$148,275.74
5. FILES MANAGEMENT				
Actual: # of Reports Reviewed	73,333	26,182	47,151	0
Percent of Total	100.00%	35.70%	64.30%	0.00%
Total Cost	$275,303.39	$98,283.31	$177,020.08	$0.00
6. ACCIDENT CATALOGING				
Actual: New Claim Files Created	10,335	5,518	4,817	0
Percent of Total	100.00%	53.39%	46.61%	0.00%
Total Cost	$59,537.52	$31,787.08	$27,750.44	$0.00
7. REHABILITATION DLI				
Actual: # of Panels & Reviews	518	44	65	409
Percent of Total	100.00%	8.49%	12.55%	78.96%
Total Cost	$109,462.30	$9,293.35	$13,737.52	$86,431.43

CTIONS	Costs & Factors	Plan I	Plan II	Plan III
3. REHABILITATION PANELS SRS				
tual: # of Panels	518	44	65	409
Percent of Total	100.00%	8.49%	12.55%	78.96%
Total Cost	$34,435.64	$2,923.59	$4,321.67	$27,190.38
. SPECIAL PROJECTS				
Blue Book Costs				
Governor's Task Force on Work Comp				
rcent of FY 92 Total Actual Expenses for Admin	100.00%	20.58%	41.95%	37.47%
tal Cost	$14,246.86	$2,932.00	$5,976.56	$5,338.30
EDICAL REGULATION	14,040	1,586	3,421	9,033
tual: Same Basis as Claims Management, #4	100.00%	11.30%	24.37%	64.33%
Total Cost	$59,628.14	$6,737.98	$14,531.38	$38,358.78
. POLICY COMPLIANCE				
Actual: # of Carriers	279	55	224	0
Percent of Total	100.00%	19.71%	80.29%	0.00%
Total Cost	$179,847.02	$35,447.85	$144,399.17	$0.00
EDIATION				
Actual: # of Cases Processed	663	78	125	460
Percent of Total	100.00%	11.76%	18.85%	69.39%
al Cost	$173,062.61	$20,352.16	$32,622.30	$120,088.15
BSEQUENT INJURY FUND ADMIN	$112,815,857	$12,298,230	$23,348,891	$77,168,736
Actual: Total Compensation Paid	100.00%	10.90%	20.70%	68.40%
al Cost	$20,798.51	$2,267.04	$4,305.29	$14,226.18
FY FUNCTIONS:				
ADMINISTRATION				
ent of FY 92 Total Actual Expenses	100.00%	25.64%	9.29%	65.07%
Total Cost	$28,943.53	$7,421.12	$2,688.85	$18,833.55

SCHEDULE OF INCOME COLLECTED IN EXCESS OF FY 1992 ACTUAL COSTS TO BE CARRIED FORWARD TO FY 1993 ASSESSMENT

	TOTAL	PLAN I	PLAN II	PLAN III
AL COLLECTED IN FY 1991	$2,815,519.22	$681,454.91	$647,740.94	$1,486,323.37
S NET TOTAL COSTS PER EXHIBIT A	($2,925,826.01)	($593,651.69)	($846,648.04)	($1,485,526.29)
LECTION ADJUSTMENT TO EXHIBIT B *	($110,306.80)	$87,803.22	($198,907.10)	$797.08

unts may vary due to rounding.

FUNCTIONS	Costs & Factors	Plan I	Plan II	Plan III
15. OCCUPATIONAL SAFETY STATISTICS				
Actual: # of Employers	31,213	358	4,249	26,606
Percent of Total	100.00%	1.15%	13.61%	85.24%
Total Cost	$54,570.17	$627.56	$7,427.00	$46,515.61
16. SUPPLEMENTAL DATA SYSTEM				
Actual: # of Claims	11,397	6,480	4,917	0
Percent of Total	100.00%	56.86%	43.14%	0.00%
Total Cost	$31,000.00	$17,626.60	$13,373.40	$0.00
17. LOSS CONTROL				
Actual: # of Activities (Hours)	2,296	801	25	1,470
Percent of Total	100.00%	34.89%	1.09%	64.02%
Total Cost	$275,192.24	$96,014.57	$2,999.60	$176,178.07
8. MINING INSPECTION				
Actual: # of Inspection	2,711	593	521	1,597
Percent of Total	100.00%	21.87%	19.22%	58.91%
Total Cost	$228,339.54	$49,937.86	$43,886.86	$134,514.82
19. BOILER INSPECTION				
Actual: # of Field Hours	2,173	382	29	1,762
Percent of Total	100.00%	17.58%	1.33%	81.09%
Total cost	$199,024.47			
Less License Fees Collected	$36,086.00			
Adjusted Costs	$162,938.47	$28,644.58	$2,167.08	$132,126.81
TOTAL COSTS	$2,925,826.01	$593,651.69	$846,648.04	$1,485,526.29
LESS MISCELLANEOUS REVENUE FY 1992 *	$0.00	$0.00	$0.00	$0.00
TOTAL ADJUSTED COSTS TO EXHIBIT A-1 **	$2,925,826.01	$593,651.69	$846,648.04	$1,485,526.29

* *Fees collected for photocopies or transcripts were used to abate expenditures, they are no longer accounted for as Miscellaneous Revenue.*

** *Amounts may vary due to rounding.*

EXHIBIT 3
DATE 3-4-93
HB 287

PROPOSED AMENDMENTS TO HOUSE BILL 287

Prepared by Oliver Goe on Behalf of the
Montana Municipal Insurance Authority,
Montana Association of Counties and
Montana School Group Insurance Authority

1. p. 9, line 7
Following: "1"
Insert: "private"

2. p. 9, line 11
Following: "year"
Insert: "Public entities insured as plan no. 1 employers must be assessed based on a fee for services actually performed by the department."

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 3/4/93
BILL NO. HB 287

PROPOSED AMENDMENTS TO HOUSE BILL 287

Prepared by Oliver Goe on Behalf of the
Montana Municipal Insurance Authority,
Montana Association of Counties and
Montana School Group Insurance Authority

1. p. 10, line 2
Following: "assessment"
Insert: "After July 1, 1993, the percentage increase in the assessment provided for in this section may not exceed the annual percentage increase in the state's average weekly wage as defined in § 39-71-116, MCA.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 3/4/93
BILL NO HB 287

Amendments to House Bill No. 287

Requested by the Montana Schools Group Insurance Authority
For the Senate Labor & employment Relations Committee

Prepared by the MSGIA
March 4, 1993

1) Amend page 9, line 6 by inserting after "the" and before "preceding" the following: "compensation paid in Montana in the."

2) Amend page 9, line 7 by striking "'s gross annual payroll of" and inserting in its place "by".

3) Amend page 9, line 12 by striking "200" and inserting in its place "1,500".

Note:

- Amendments 1 and 2 are to be considered in conjunction with one another.
- Amendment 3 to be considered separate from 1 and 2.
- Amendment page numbers and line numbers are accurate for H.B. 287 - 2nd reading edition.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 3/4/93
BILL NO. HB 287

Montana Schools Group
WCRRP Workers' Compensation Risk Retention Program
Plan Administrator, Montana School Services Foundation - Howard R. Bailey, Director
1 South Montana Ave. • P.O. Box 5388 • Helena, Montana 59604
442-0557 (Administration)

Exhibit 6
3-4-93
HB 287

March 4, 1993

Senate Labor and Employment Relations Committee
Honorable Committee Chairperson Tom Towe and Committee Members:

This letter serves as an addendum to the MSGIA proposed amendments to H.B. 287 originally introduced in the House Labor and Employment Relations Committee and now being heard by the Senate Labor and Employment Relations Committee. These remarks are directed toward the proposed amendments suggested by the Montana Schools Group Insurance Authority which recommends amending Section 2; 39-71-201. (1), (c) on page 9, line 6 by inserting after "the" and before "preceding" the following "compensation paid in Montana in the", and page 9, line 7 by striking "'s gross annual payroll of" and inserting in its place "by". Another amendment would be to change page 9, line 12 from "200" to "$1,500". These amendments are based on the second reading. These amendments should be considered separate and individual. It must be noted, the MSGIA does not oppose H.B. 287, but strongly endorses these amendments and graciously requests your serious consideration.

Addressing the first proposed amendment, we submit the following:

- The Montana Schools Group is a unique entity, with over 180 separate member local school districts of all sizes, from all areas of the State. The gross annual payroll exceeds $300,000,000 and will continue to rise as additional districts join the plan. No other Plan I insurer is, or ever will be. this size.

- Since becoming a Plan I insurer in late 1989, the Schools Group has paid a disproportionate share of the assessment. It is one of over 50 Plan I insurers, but paid about 25% of the Plan I assessment for Fiscal Year 1992, and will pay about 30% of the assessment in Fiscal Year 1993.

- The Schools Group places light demands on the administration of the Workers' Compensation and Occupational Disease Acts, despite having a large payroll and despite covering a large number of employees. Teachers do not sustain work related injuries at the rate, or with the severity, of the employees of many other Plan I insurers yet they account for 89% of Montana Schools Group payroll. The Schools Group is in fact high payroll - low loss.

- In Fiscal Year 1992 the Schools group was assessed over $160,000 as its share of the administrative costs. This amount included:

    - Over $20,000 for hearings and for petitions filed in the Workers' Compensation Court, even though Schools Group employees generated no hearings and no petitions.

    - Over $4,000 for mediations, even though only three telephone mediations involving Schools Group employees were conducted.

    - Over $3,400 for rehabilitation panels, even though only two rehabilitation panels considered cases involving Schools Group employees.

    - Over $10,000 for mining inspections, even though no members of the Schools Group operates a mine.

    - Almost $30,000 for loss control, even though the Schools Group has its own active, effective loss control program.

- Basing the assessment on gross payroll distorts the distribution of the assessment among Plan I employers and bears no relation to the demands actually made on the system.

- Much of the Department's workers' compensation workload is generated by claims activity or actual loss incurred to employers not by payroll. Even more of their workload should be prioritized by actual loss incurred. The assessment generates necessary revenue to allow these service functions for employers and injured workers to exist. Payroll alone is not a good indicator of actual loss or exposure to loss and, therefore, is not an equitable assessment. It is not used for Plan II or Plan III assessments, nor is it used as a basis for other assessments allowed for in the Workers' Compensation Act. Indemnity Compensation paid is a much more accurate basis of assessment. It not only takes into account payroll (indicator of employee exposure to loss), but also inherent industry hazards and employer specific hazards (also potential and actual loss determinants). Frequency and severity (complexity) of claims are loss related and workload and expense generators for the Department of Labor and Industry. Indemnity compensation paid is a more equitable basis for assessment.

- The proposed amendment does not affect Plan II or Plan III, nor does it affect the amount of revenue generated from Plan I entities. It merely re-apportions the individual assessment amounts among Plan I entities.

- An indemnity claims paid assessment method would provide additional incentive for individual Plan I entities to pursue or maintain extremely effective safety and health programs and effective and efficient claims management activities. The MSGIA currently has in place comprehensive safety and health programs in Montana school districts and provides them with excellent claims management services. The fact these are effective at stabilizing or reducing claims frequency, severity and loss will have no effect on our assessment amount under the payroll assessment method, but would for us and other self funded entities under an indemnity compensation paid assessment method.

- Opponents of this amendment have yet to state that the current assessment method was equitable, nor did they state the proposed method was inequitable. They did state the current method was traditional. Traditional does not equate to equitable nor is it, by itself, a valid defense for a State statute should it ever be contested in court. This traditional assessment method has essentially offered private self insured entities a "free lunch", since MSGIA inception, at our expense. Sticking with tradition in workers' compensation may have been a contributing factor with the current unfunded liability incurred by the State. Major reform in this session will deviate from tradition in hopes of providing a more fair and equitable workers' compensation system. The assessment method should be no exception.

In regards to the second proposed amendment, we submit the following.

- These are procedures at the Department that are done at least annually for all self funded entities. The costs are relatively fixed regardless of entity size. It is our contention that the current minimum assessment amount of $200.00 does not cover "fixed" costs at this time and, therefore, should be increased. We are recommending $1,500 minimum annual assessment amount for Plan I entities.

- This is a noticeable increase; however, self insured entities are substantially large businesses and should pay a fair share.

Thank you for your consideration on these proposed amendments. Please call if you desire additional information or clarification.

Bill Adamo, Chairperson
Livingston School District #4&1

Debra Fulton, Vice Chairperson
Helena School District #1

Christie Deck, Secretary/Treasurer
Great Falls School District #1

Howard R. Bailey
Program Administrator

Bill Christianson
Risk Manager

DATE March 4, 1993

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: HB287 - Wiseman
HB 259 - Schwinden

PLEASE PRINT

Name	Representing	Bill No.	Check One: Support	Oppose
GEORGE T. BENNETT	MONT. BANKERS ASSN	287	X	
Jack Anderson	Mt. League of Sv. Inst	287		X
Pat Melby	MT. Ski Area Ass'n	259	✓	
Geo Miller	Showdown Ski Area	259	✓	
Tim Dreitler	Red Lodge Mountain	259	✓	
Dore Schwinden	Dist #20	259	✓	
Chuck Hunter	DOLI	287	X	
Janis S. Van Riper	self	287	X	
Ray Barnicoat	MACo	287	X	
Bill Christiansen	MSE-WCRRP	287	X	
Dougald	Mt Self Insurers Assn	259 287	X	
J.B. Tuttle	Mont Council	259	✓	
Jacqueline Denmark	Am. Ins. Assn.	287 259	✓	
Kay Williams	MPC/Entech	287	✓	
Jim Murphy	State Fund	259	✓	
Dan Walker	US WEST	287	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE Mar 4

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: HB 287 & HB 259

Name	Representing	Bill No.	Check One Support	Oppose
Bill Wiseman	HD53	287	✓	
Kevin Taylor	Great Divide Skiing Co	259	X	
Ken Harvestad	Mt. Snowmobile Assn. MX Boating Assn.	259	X	
Roger Tippy	MT Independent Bankers	287	And SB	
Ellen Hargrave	Hargrave Ranch	259	X	
Lisa Case	MMIA-MSGIA-MACO	287	w/amend.	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

174.

Senator Aklestad said he was not sure if the amendments made HB 174 any more acceptable.

Senator Lynch reminded Senator Aklestad that the amendments came from the opponents, the Billings police.

Vote:

The Motion FAILED with Senator Towe, Senator Keating, Senator Aklestad, and Senator Burnett voting NO. Senator Lynch, Senator Blaylock, and Senator Wilson voted YES and requested a Minority Report.

Motion\Vote:

Senator Keating moved HB 174 BE TABLED. The Motion FAILED with Senator Blaylock, Senator Lynch, Senator Wilson, and Senator Towe voting NO. Senator Keating, Senator Aklestad, and Senator Burnett voted YES.

Motion:

Senator Blaylock moved HB 174 BE NOT CONCURRED IN AS AMENDED.

Motion:

Senator Lynch made a substitute motion that HB 174 be referred to the Floor without recommendation.

Motion\Vote:

Senator Keating made a substitute motion that HB 174 BE NOT CONCURRED IN AS AMENDED. The motion CARRIED with Senator Keating, Senator Aklestad, Senator Burnett, and Senator Towe voting YES. Senator Blaylock, Senator Lynch, and Senator Wilson voted NO. Senator Lynch, Senator Blaylock, and Senator Wilson requested a Minority Report.

EXECUTIVE ACTION ON HB 287

Discussion:

Senator Towe explained the amendments (HB028703.AEM). He explained Item 1 would allow for a full due process hearing in a workers' compensation case. He said Item 2 addressed the concern that HB 287 would put a lien on personal property, which would cause problems with financial institutions.

Motion:

Senator Keating moved amendments to HB 287 (HB028703.AEM) BE ADOPTED. The Motion CARRIED UNANIMOUSLY.

Discussion:

Senator Aklestad voiced a concern about Item 1 of the amendments (HB028703.AEM). He said it seemed to change what the Montana Department of Labor and Industry held for jurisdiction over workers' compensation cases without HB 287. He asked for clarification.

Senator Towe clarified this would provide that after a person went through a hearing, DOLI could get a lien.

Vote:

The Motion to amend HB 287 (HB028703.AEM) CARRIED UNANIMOUSLY.

Motion:

Senator Keating moved DOLI amendments (Exhibit #1) BE ADOPTED.

Discussion:

Senator Towe questioned the amendments, saying the amendments already adopted (HB028703.AEM) had taken care of existing problems in the Bill.
He said the DOLI amendments should not be needed.

Vote:

The Motion to Adopt DOLI amendments (Exhibit #1) CARRIED UNANIMOUSLY.

Motion:

Senator Keating moved HB 287 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Aklestad argued he did not like the ten years latitude given to DOLI to bring a judgment (page 20, line 19).

Senator Towe said that ten years was the time for which a judgment in Montana was valid. He said if a decision was a judgment, and treated as such, under existing law it would be valid for ten years.

Senator Keating asked if ten years was the statute of limitations. Senator Towe answered this was standard and if there was a different time in the Bill, it would be conflicting with state law. He added a lien against real property ceased after six years.

Senator Keating asked if on Page 2, line 14, providing for

specific claims expenditure code was taken out. Eddye McClure answered that Senator Lynch's amendment (adopted by the Committee on March 16, 1993) took this out of HB 287.

Senator Aklestad asked the Montana Department of Labor and Industry if the Department of Revenue still had statutory authority in the Bill and could perhaps collect debts in a better manner than DOLI.

Senator Towe answered that the section in the Bill that would allow the Montana Department of Labor and Industry to collect in the same manner as the Department of Revenue had been amended out because it would eliminate a hearing process.

Senator Keating asked Senator Towe if the statute of limitations was the same under the Department of Revenue. Senator Towe answered the statute of limitations for the Department of Revenue was five years to receive a judgment, then the judgment could stand for ten years.

Vote:

The Motion by Senator Keating that HB 287 BE CONCURRED IN AS AMENDED CARRIED with Senator Towe, Senator Keating, Senator Blaylock, Senator Lynch, Senator Burnett, and Senator Wilson voting YES. Senator Aklestad voted NO. Senator Keating was assigned to carry HB 287.

EXECUTIVE ACTION ON HB 621

Motion\Vote:

Senator Lynch moved HB 621 BE CONCURRED IN. The Motion CARRIED with Senator Towe, Senator Blaylock, Senator Lynch, and Senator Wilson voting YES. Senator Keating, Senator Aklestad, and Senator Burnett voted NO. Senator Lynch was assigned to carry HB 621.

EXECUTIVE ACTION ON HB 617

Discussion:

Senator Towe explained amendments to HB 617 (HB061701.AEM). He said he wanted to make sure the prison industries themselves could pay workers' compensation if they wanted. If the Montana Department of Labor and Industry paid the workers' compensation then there would be reimbursement.

Motion:

Senator Lynch moved to amend HB 617 (HB061701.AEM).

Discussion:

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 3/18/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GARY AKLESTAD	X		
SENATOR TOM KEATING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR J.D. LYNCH	X		
SENATOR JIM BURNETT	X		
SENATOR BILL WILSON	X		
SENATOR TOM TOWE	X		

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 19, 1993

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration House Bill No. 287 (first reading copy -- blue), respectfully report that House Bill No. 287 be amended as follows and as so amended be concurred in.

Signed: Thomas E. Towe
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, page 2, lines 14 through 16.
Following: "MEDIATION;" on line 14
Strike: remainder of line 14 through "CODES;" on line 16

2. Page 20, line 12.
Strike: "The"
Insert: "After the due process requirements of 39-71-2401(2) and (3) are satisfied, the"

3. Page 20, line 17.
Following: "real"
Strike: "and personal"

4. Page 20, line 21 through page 21, line 4.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

5. Page 36, line 14 through page 37, line 9.
Strike: section 20 in its entirety
Renumber: subsequent sections

6. Page 37, line 13.
Strike: "Sections"
Insert: "Section"
Strike: "AND 20"
Strike: "are"
Insert: "is"

7. Page 37, lines 15 and 16.
Strike: "sections" on line 15
Insert: "section"
Strike: "AND 20" on line 16

-END-

Amd. Coord.
Sec. of Senate

Keating
Senator Carrying Bill

621240SC.San

Amendments to House Bill No. 287
Third Reading Copy

Requested by Senator Towe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
March 16, 1993

1. Page 20, line 12.
Strike: "The"
Insert: "After the due process requirements of 39-71-2401(2) and (3) are satisfied, the"

2. Page 20, line 17.
Following: "real"
Strike: "and personal"

Before the Senate Labor Committee

Financial institutions' proposed additional amendment to proposed amendments 1 and 2 from C. Hunter, Dept. of Labor

3. Page 20, line 21 through page 21, line 4
Strike: subsection (2) in its entirety
Renumber: following subsection

Rationale: The affidavit in para. (b) is just one more piece of paperwork in a loan transaction whose benefit to the bureaucracy does not equal the burden on lenders and borrowers. If that is stricken, para. (a) adds nothing to existing lien law, 71-3-113, MCA ["Other things being equal, different liens on the same property have priority according to the time of their creation."] Any precedent set in the unemployment insurance law is an undesirable precedent and the financial institutions will plan to seek the amendment of that provision in the next session.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3/18/93
BILL NO. HB 287